# THESAURUS JURIS CIVILIS, SIVE SUCCINCTA EXPLANATIO COMPENDII...

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LIBRI

DONATI DAL

DOTTOR ANNIBALE GIULIONI

GIURISTA

Nato a Firenze il 7 Febbraio 1807
e morto il 1° Dicembre 1895 in Firenze.

*18 Maggio 1896*

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# TITVLVS IV.

## De legitimis tutoribus.

*V. Cod. 30.*

TUtela legitima (1) eſt, quæ *deficiente teſtamentaria*, (2) à ſola Lege, ſine hominis facto, immediate conſtituitur. *Ulpian. fragm. tit. de tutel. §. 2. l. 5. pr. h.* D
A * Extraordinaria *irregularis*, (3) quæ contra communes juris regulas defertur: dicitur etiam anomala: Sic *mater & avia* (4) præferuntur omnibus legitimis ordinariis, *Nov. 118. c. 5. contra L. 1. C. quando mul. tut. off.* Collateralibus, non etiam *adſcendentibus*, (6) *L. 2. 3. C. quando mul. tut. off. fung.* (nam quoad hos dd. LL. per d. N. non ſunt mutatæ: *v. 27. C. de teſt. Carpz. 2. c. 11. d. 15.*) neque *confirmatis*, (7) *arg. 27. de teſt. tut.* Eſt igitur tutela materna, quæ deficiente teſtamentaria à Lege, matri, vel aviæ, volentibus, ac *juri ſuo* (8) renunciantibus, defertur *d. c. 5.* Jure ff. & Cod. hæc ſpecies *eſt dativa*, (9) *L. ſ. de tut. 2. ſ. C. quando mul. tut. off.* (*obſ. 6.* (10) *C. ad SCt. Tertull.*) † D N

Defertur Lege, ſcil. *N. 118. c. 5.* (neque eam removet *ſola* (11) teſtatoris prohibitio, *arg. l. 11. de R. I. Diſſ. Bach. ad W. h.*) primum matri, deinde aviæ, *Nov. 118. c. 5.* aut duabus aviis ſimul, *L. 9. h. N. 118. c. 5. in f.* (non etiam *noverca*, (12) *arg. de leg. 3. L. ſ. C. de his, qui ven. ætat.* neque *aliis perſonis*, (13) *dd. LL. jun. l. N. 118. c. 5.*) niſi aliud quid, e. g. furor impediat. Hoc ſingulare eſt hic, quod *admittantur* (14) mater & avia debitrices, &c. *Nov. 94. c. 1.* Ad tuendos etiam naturales & vulgò quæſitos, *ſ. C. quando mul. tut. off. N. 89. c. 14.* Modo renuncient (1) futuris nuptiis: quod olim jurato fiebat, *N. 94. c. 2.* hodiè non: *Ad nuptias* (15) tamen tranſiens *deſinit* (16) eſſe tutrix. *N. 94. c. 2.* (2) *SCto Velleiano* (17) *N. 118. c. 5.* (3) omnibus & ſingulis LL. beneficiis ac privilegiis in favorem ſexus muliebris introductis: *N. 94. c. 2.* quod fieri debet coram actis ſc. coram judice, *N. 118. c. 5. in med.* C S O R

A * Ordinaria ſive regularis eſt, quæ ſecundum communem juris ordinem, cognatis proximioribus defertur: Olim diverſæ erant ſpecies: *vid. Inſt. lib. 1. tit. 15. & ſeqq.* Novo jure ſublata *parentum*, (18) patronorum & fiduciaria, unica legitimæ tutelæ ſpecies ſupereſt. D †

Lex. 5. *pr. h.* olim vocabat agnatos tantum, *§. 1. I. L. 7. h.* *Hodie cognatos* (19) in genere: *N. 118. c. 5.* Præferuntur tamen proximiores, non ratione gradus, *ſed ſucceſſionis*, (20) *N. 118. c. 3. & 5.* hic æquales ad ſucceſſionem, *omnes ſunt* (21) tutores, *9. h. N. 118. c. 5.* & unus adminiſtrat, periculo *omnium* (22) *d. c. 5.* Modo iſte proximus ſit *habilis*, (23) *10. 11. h. N. 118. c. 5. 0. 12. §. 7. de excuſat.* C

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### *Notæ variorum.*

(1) [*Tutela legitima*] Hæc dependet quidem à [illegible] *juris poſitivo*, hoc tamen præſuppone[illegible] omnibus gentibus ſere communes, ut habeamus hanc tutelam etiam jure Germano [illegible], & hanc ſolum valere[illegible] [illegible] non tantum in tutela privata, ſed & *illuſtrium* [illegible], vid. *Speculum jur. publ. l. 2. c. 9. §. 78. 79.* [illegible].

(2) [*Deficiente Teſtamentaria*] [illegible] *teſtamento ſit confirmatus*, vel *datus ante* [illegible] *ut ſe a tutela abſtineat*, [illegible] tamen certum eſt, quod legitima tutela locum ſit, cum omnibus [illegible] teſtamentariis vel [illegible] pta, vel ſaltem in effectu non adeſt, ſed ſi teſtamento quis ex *certo tempore*, vel *conditione* ſit [illegible], interim non *legitimus*, ſed *dativus* [illegible]

Deficiente parte teſtamentaria locum habet legitima



8. 17 4. 3º

[illegible]

[illegible]

gnatus etſi proximiores [illegible] admittuntur.

agnatus, licet gradu & ſucceſſione proximiores, excludunt, neque cognati admittuntur, niſi agnati penitus deſint, L. R. l. 1. a. 23 Wurtemb. art 49 ſive bona feudalia, ſive allodialia ſpectes. Alio mares autem agnatio ex [illegible] familiæ ſubgreunque, d. tot. L. R. Proximiores autem remotiores excludunt, & inter gradu pares ſemper reliquis præferuntur, d. l. 1. L. R. Carpz. l. 5 & 81 Meurk.

(20) [And ſucceſſionem] Hinc germanorum ſius ſi minorennes ſunt, excludunt pupuli fratrem unilateralem, licet gradu proximiorem. Struv.

Qui habent jus ſucceſſionis, habent etiam tutelam.

(21) [Omnes ſimul] Procedit hoc in omni genere ſucceſſionum, adeò ut & illi, quibus ex pacto confraternitatis debetur ſucceſſio, ad tutelam admittantur. Idem etiam extendunt ad illos, qui expectantiam in feudo habent. Jure Saxonico id ſpeciale eſt, quod ſenior tantum admittatur. Struv. In Principatibus agnatis tutoribus plerumque adjungi ſolent Conſiliarii tutelares. Vormundſchaffts Räthe: Lauterbach ad ff. h. t. 9. Mevius.

(22) [Omnes] Modo reliqui in hunc unum conſentiant, ſin ſecus, omnibus adminiſtratio indulgenda, l. 3 § 8. ff de adminiſt. tut. ubi ergo non defertur adminiſtratio non ex conventione, ſed ex juris diſpoſitione, non puto reliquos committere periculum, e. g. uti deſtinat, ſi Senior in Saxonia ſolus tutor ſit. Struv.

Unum poteſt eligi [illegible] ad tutelam.

Quid ſi non ex conventione, ſed juris diſpoſitione adminiſtratio.

(23) [Mulieres] Hic modo minor non ſit vel furioſus. Alioqui ad ſequentem agnatum habilem devolvitur tutela. v. Aur. Bul. c. 7 Struv.

# TITULUS V.

## De tut. & cur. dat. ab his, qui jus dandi habent, & qui & in quibus cauſis ſpecialiter dari poſſunt.

*Cod. V. 31. 32.*

Si alius non [1] adſit alius tutor *teſtamentarius* [2] vel legitimus, tum locus eſt tutelæ dativæ: *10. C. de Epiſc. & Cler. 7. ff. rem pup. ſalvam fore, v. 10. h. 11. pr. de teſt. tut.*

C *DANTUR* à magiſtratu competente, ſc. cui hoc ſpecialiter conceſſum: *6. §. 2. de tutel.* hodiè ab iis, qui habent juriſdictionem *ordinariam*, [3] etiam *inferiorem*, [4] die Erb-Gerichte. *Fr. 1. Ref. 16. n. 4.* (*Immediatus* [5] à Camera vel Imperator. *Gail. 1. O. 1. n. 47.*) cujus poteſtati pupillus eſt ſubjectus, vel ratione *domicilii*, [6] *v. 5. C. de municip. Cz. 1 d. 1. Perez. ad tit. C. de municip.* vel ratione *bonorum* [7] *L. un. in f. C. ubi pet. tut. vel cur. 27. h.* inter hos præfertur *judex domicilii*, [8] *d. l. un.* Si autem pupillus bona habeat ultra *continuum lapidem*, [9] tum judex ratione bonorum illorum tutorem *alterum adjungit*, [10] *§. 17. I. L. 21. §. 2. de excuſ.* Tutoris datio olim cum *privilegiaria erat*, [11] mandari non poterat *1. de off. ejus, cui mand. Jurid. l. 8. h. hodie poteſt*, [12] *R. I. de anno 1548. 1577. tit.* von der minderjährigen *Tutorn.*

Dantur *PURE*, [13] *6. §. 1. de tutel.* omni tempore & loco: *5. §. 5. de tutel. 8. §. 2. h. 2. de feriis.* ad petitionem *aliorum*, [14] (*de quo in ſeq. tit.*) vel ex officio. *2. §. 2. qui pet. tut. 6. C. qui dar. tut. R. I. de ann. 1548. & 1577. tit. 32. 4. §. 8. de damn. infect.* *OMNES*, qui nec impediuntur, nec prohibentur: *7. C. qui dar. tut.* modo ſint ejus Juriſdictioni
P *ſubjecti* [15] *1. §. f. l. 3. h. 5. C. qui dar. tut. L. f. de Juriſd.* (*obſ. 17.* [16] *de tutel.*) Unde magiſtratus ſe ipſum non conſtituit: *4. h. v. 25. de procurat. 21. §. f. h. 13. §. 4. ad SC. Trebell.* Si tamen in ſua civitate non ſit idoneus, eligit alterius loci civem nomenque ejus mittit magiſtratui ejus loci, ut ipſe *eum conſtituat* [17] ac confirmet: *24.* uni pupillo plures tutores, *23.* etiam invitum ac abſentem: *arg. 16. de R. J. 5 h.* non etiam, quem pater prohibuit, *21. §. 2.* aut qui ſe ingeſſit: *21. §. f.* aut qui moribus reprobus. *21. §. 1.*

Pupillis ſuæ juriſdictioni ſubjectis, *ut ſupr. in C.* præſentibus, abſentibus, ignorantibus & *invitis.* [18] *5. 6. h.*

*Nota*

## Notæ variorum.

(1) [illegible]

(2) [illegible]

(3) [illegible]

(4) [illegible]

(5) [illegible]

(6) [illegible]

(7) [illegible]

(8) [illegible]

(9) [illegible]

(10) [illegible]

(11) [illegible]

(12) [illegible]

(13) [illegible]

(14) [illegible]

(15) [illegible]

(16) [illegible]

non pro *Juriſdictione Magiſtratus Municipalis*, ſed *Imperio Præſidis* Provinciæ, quod quidem uſum habet, quando in eodem municipio non reperiuntur homines idonei ad tutelam, aut in vicino municipio eſt aptior, quam in eodem, quo pupillus habitat. Quamvis hodie illo circuitu opus non videtur, quia cauſæ pupillares inde à prima inſtantia ad ſummam curiam referuntur, *l. un. C. quando imp. inter pup.* Itaque propinqui pupillorum aut ipſi adoleſcentes directè eam adeunt, quæ hodie jus *Præſidis* habet. *Hob. prael. h. n. 3. Berger.*

(17) [*Eum confirmat*] Hoc alio caſu vix obtinebit hodie, quam ſi in alia civitate degenti pupillo ſit ſanguine junctus. Et hoc per literas mutui compaſſus expediri ſolet. *Brunn. ad c. l. 24. n. 1. Stryk.* Sic in ſubſidium alienæ *Juriſdictionis* tutor ſubjectus dari poteſt, ſed actus confirmationis ad judicem pupilli pertinere videtur. *a. l. un. C. ubi pet. tut.* Talis conſtitutio tutoris hodie infrequentior eſt, quam legitimi tutoris ſub aliena juriſdictione exiſtentis, qui non tantum à Judice pupilli confirmatur, ſed etiam noſtra *Ref. Gr. d. a. 1609. n. 8.* cavetur quod citra cautionem nihil ex rebus pupillaribus in alienam juriſdictionem transferri, nec non ratio in loco adminiſtrationis reddi debeat. Atque hæc cautio in ſecuritatem pupillorum alibi quoque recepta eſt. *Richter. Dec. 12. n. 12. Mencken.*

(18) [*In vitis*] Quia non intelligunt, quod ad ſui commodum pertinet. *Stryk.*

# TITULUS VI.

## Qui petant tutor. vel curator. & ubi petantur.

### *Cod. V. 31. 32.*

A B PETUNT *tutores* (1) * ex *NECESSITATE* * (1) *MATER.* *1. §. 2. h. §. 6. I. d. SCt. Tertull. 2. §. 23. ff. eodem 3. 6. C. eodem. 10. C. de legit. hered.* Si tutor aut non ſit conſtitutus, aut quovis modo deſierit, *4. §. 2.* aut non ritè fuerit conſtitutus, e. g. in epiſtola: *4. pr.* Et petere debet h. l. sc. legitimos & idoneos. *2. §. 1.* Nam alioquin privatur ſucceſſione legitima liberorum: *2. §. 1. 10. C. de legit. hered. 2. § 23. ff. 3. 6. C. ad SCt. Tertull.* Modo (2) liberi deceſſerint intra pubertatem: *5. C. ad SCt. Tertull. 10. C. de legit. hered.* nam puberes facti *potuerunt teſtari*, (2) adeoque, ſi hoc non fecerunt, videntur matri injuriam remiſiſſe: *1. §. 1. de jure codicill.* (3) Mater tutores non petierit *intra annum* (3) *§. 6. I. ad SCt. Tertull. 10. C. de legit. hered. Carpz. 2. c. 11. d. 15.* (*Diff. Lauterb. Vinn. ad d. §. 6. propter L. 2.* (4) *§. 23. ad SCt. Tertull. 31. 38. & 43.*) nam intra annum poteſt excuſari: *l. 2. §. 43. ad SCt. Tertull.* (5) Mater ſit XXV annis major: nam alias *reſtituitur in integrum*, (5) & licet ei hoc jus ignorare. *2. C. ſi advers. delict. 5. C. h.* (8) Tutores dativos non præcedant teſtamentarii *vel legitimi.* (6) *9. C. vid. Carpz. 2. c. 11. d. 15.*

b. * (2) *IDEM* omninò obtinet etiam in omnibus proximis cognatis, *qui ſperant* (7) ſucceſſionem: *10. C. de legit. hered.*

b. * (3) *LIBERTI* patronorum liberis impuberibus; qui ſi hoc negligentia vel malitia omiſerint, a magiſtratu extraordinariè puniuntur. *2. § 1. h.*

a. * libera voluntate reliqui cognati, amici &c. *2. pr.* & hi repetunt ſumptus actione Negotiorum geſtorum. *2. C. de N. G.* modo alius non adfuerit, qui propriis ſumptibus illud feciſſet. *2. C. de N. G.* Poteſt etiam creditor cum pupillo acturus, ceſſantibus neceſſariis tutorem *ei petere.* (8) *2. §. 3. h.* Nemine petente, magiſtratus ex officio conſtituere ſub pœna tenetur. *R. P. de anno 1548. & 1577. tit.* von der Minderjahrigen *Tutorn. &c.*

Nota

## *Notæ variorum.*

[illegible] [illegible] [illegible]

(1,) [*Petant tutores*] Ex lege humanitatis quidem ad tutores pupillis petendos, obligantur homines alii, ſed ista obligatio valde laxa eſt, ac in foro civili nullum habet effectum, niſi lex poſitiva eam addat, quod quo ad matrem & cognatos, ſucceſſionem tenus ſpe ſuccedendi factum eſt h. t. vide *D.D. Auth.* 41 [illegible] *Titius*. Ceterum minores, *Curatores ipſi petere debent*, vel per Procuratorem, *l.* 2 §. 4 *ff. h. t. l.* 6. *C. h. t.* etiam hodie [illegible] *Huber. prael. ff. h. t.* [illegible] 4. *Mynſinger*.

Matri liberis tutorem petere negligenti legitima ſubtrahenda tamen eſt.

(2,) [*Petere tutores*] Hoc tamen intereſſe puto quod matri, ſi impuberes deceſſerint, tota hereditas auferatur, ſed ſi puberes teſtamentum condere & matrem excludere velint, *Legitimam* ipſi [illegible] [illegible]. Nam inter cauſas exheredationis *Nov.* 115 [illegible] non eſt, ſi nullus tutor petitus ſit. *Stryk.*

(3) [*Intra annum*] Ratio, quia vidua poſt mortem obitum ita luctu mœſta atque oppreſſa cenſetur, ut de aliis rebus valde ſolicita eſſe non debeat. Quæ ratio cum ceſſet in cognatis aliis, his brevius tempus præfixum legimus, vid. Münſter. Gem. Land-Ordn. [illegible] 5 [illegible] in ſechs Wochen nach Abfall der Eltern. Gül. und Berg. Ordn. c. 46 [illegible] *menſis*. *Adde Edict* [illegible] *Edict Brandeb.* [illegible] 1642 [illegible] Von Vormundſchaft §. 2 [illegible] [illegible]. *Feltman* [illegible] [illegible] [illegible] *Tut.* [illegible] 2. *Peguſſ.* [illegible] 1.

(4) [*Propter l. 2*] In *hoc textu* iniungitur matri, ut confeſtim ſine mora tutorem petat. Cum vero illud *confeſtim* ibi non determinetur, recurrendum eſt ad §. 6. *J. ad SCtum Tertull.* ubi annum conceditur. *Stryk.* Reſtius negatur *l.* 2. §. 23. *ibi confeſtim* §. 35. *ibi ſine mora* § 38 *ibi confeſtim* & § 43 *ibi ubi primum potuit*, i. e. *Prætoris copiam habuit*, ita tamen, ut nullo modo annale tempus excedatur, *ff. ad SC. Tertull.* Ad Obſ. § 6. *J. ad SCtum Tertull. ibi intra annum* *l.* 10. *C. de legit. hered. ibi intra annum*, [illegible] [illegible] *ea d. l.* 2 explicandos. Quamvis hæc ſententia [illegible] [illegible] habeat uſum, niſi mater ad ſecunda vota tranſierit, cum alias ſic ipſa tutrix legitima. *Huber. prael. h. t. n.* 2 *Carpz.* 2. 18. 15 *Deſenſio Autor.* *Berger.*

(5,) [*Reſtituitur in integrum*] Quamvis enim delinquere videatur mater non petendo tutorem, attamen cum hoc delictum ſit *civiliter* & contra *Jus Civile* tantum commiſſum, excuſabit mi noremnitas, & ſic etiam contra delictum datur reſtitutio, ſi non commiſſionis, ſed omiſſionis. Si contra jus *Naturæ* peccaverit, nulla datur reſtitutio, quia hic non excuſat ignorantia. *Stryk.* Cæterum quod dictum de matre, quod petere debeat tutorem, obtinet quocunque modo deficiente tutore, etiamſi liberi ſint naturales, *l.* [illegible] *C. h. t.* non idem obtinet, cum tutores ſuſpectos non fecit, nam an ſuſpecti ſint vitio matris eſt æſtimare, *l.* 4. § [illegible] *ff. h. t.* *Mynſinger*.

Contemptu ſtam petendi tutoris, mater in integrum [illegible] [illegible] [illegible].

(6) [*Vel legitimè*] Aut aliàs legitimo impedimento detenta fuerit mater, quo minus tutorem petere potuerit, vid. *Tr. d. l. ad J. D.* 12 c. 3 § 6. *ſeqq. Stryk.*

Legitimis impedimentis excuſatur.

(7) [*Qui ſperant*] Quod intelligendum & hi, ſi tutores non petierint, privari poſſint ſucceſſione. Quod porro intelligendum, ſi pupilli impuberes deceſſerint. *Stryk.*

Quod in matre obtinet, idem in proximis cognatis obtinet.

(8) [*Et petere*] Imò, hic non tantum *poteſt*, ſed & *debet* tutorem petere, quia aliàs actionem contra illum movere nequit. Quod porro obtinet, ſi quis cum minore curatorem non habente litigare velit. Cum tamen ad unum actum regulariter tutor non detur, inde plerumque & in priori caſu curator conſtitui ſolet. *Stryk.*

Creditor cum pupillo acturus, ei curatorem petere debet.

# TITULUS VII.

## De admin. & peric. tut. & cur. qui geſſerint, vel non, & de agentibus vel conveniend. uno vel plur.

*Cod. V.* 37. 38.

In *tutela conſtituta*, (1) (*vid. ſupr. tit. de tutel.*) conſideratur actus exiſtentiæ, (*de quo, fuſius agetur poſt Tit. IX. lib. XXVII.*) Officium tutorum eſt, ſi quidem notitiæ gratia dati ſint, admonere alios: 14. §. 6. *de ſolut.* Honorarii verò in vitam contutorum inquirant, eosque, ſi cauſa ſubſit, *accuſent ſuſpectos* nam alioquin ipſi tutelæ actione conveniuntur: 3. §. 2. Poſſunt etiam de J. civ. ſi velint, adminiſtrare; 40. *de A. V. O. H.* 14. §. 1. *de ſolut.* niſi teſtator hoc ſpecialiter prohibuerit, 14. §. 1. *de ſolut.* 4. *de adm. tut.*

Adminiſtrare dicitur tutor, ſi pupillus non contravenit. [illegible]

Hodie antequam tutores adminiſtrare poſſunt, ſemper requiritur * (1) *DECRETUM* magiſtratus: *R. I. de anno 1548. 1577. tit. 32.* qui tutores dare poteſt: [illegible] *de reb. eor. qui ſub tut.* vid. *Fr. lib. 1. Reſol. 17. n. 3.* Gilhman. [illegible] Tamen. Ante geſta ſunt *ipſo jure nulla*, [illegible] *Myſ. 2. O. 37.* [illegible] *Conſ. Arg.* [illegible] niſi quæ moram non admittunt [4] ullam: *arg.* [illegible] *pr.* Hoc probant tutores per [illegible] *Carpz.* [illegible] *Reſ.* [illegible] niſi tutor conſtitutus ſit ab eo judice, *coram quo agitur*, [illegible] quod requiritur etiam in *teſtamentario*, [illegible] *Vult. Jur. Rom. lib.* [illegible] (*Diff. Gail. 1. O.* [illegible] *Berl.* [illegible]) * (2) *INVENTARII* [illegible] confectio: *R. I. de ann. 1548. tit.* von den Pupillen. [illegible] *Myſ. 2. O. 37.* ante acta ſunt ipſo jure nulla. *Myſ. 2. O. 37.* niſi quæ moram non ferunt [illegible] *pr.* Omiſſio inventarii *dolo* [illegible] facta cenſetur, [illegible] *pr.* unde quoque tutor tenetur ad omne intereſſe, quod æſtimatur *in litem jurando*, [illegible] *pr.* ac ut ſuſpectus removetur cum infamia, [illegible] *C. arbitr. tut.* vel etiam extraordinarie coercetur: [illegible] niſi juſtum impedimentum probetur; [illegible] *pr.* e. g. *prohibitio patris*, [illegible] *C. de admin. tut.* [illegible] *C. quando & quibus quarta debetur.* tum enim ſufficit privata rerum conſignatio, [illegible] niſi judici aliud fuerit viſum. [illegible] *de confirm. tut.* [illegible] *Reſ.* [illegible] * (3) *JURAMENTUM.* [illegible] *Ord. Imper. de anno 1548 & 1577. tit. 32.* §. Item daß er ꝛc. Formula ejus eſt in *Ord. Cam.* [illegible] * (4) *SATISDATIO.* [illegible] *de qua ad lib.* [illegible]

*His occurrentibus* [illegible] ac præſtitis, tutor adminiſtrare tenetur: Si *PLURES* ſint, ſæpius quidem unus vel pauci adminiſtrant: Prætor tamen ſic volentes etiam omnes *admittit* [illegible] Præfertur tamen qui *ſatisdationem offert*. [illegible] *de ſatisd. tut.* [illegible] Si omnes adminiſtrant * pro diviſo, ſcilicet pro regionibus aut pro partibus, [illegible] tum ſinguli *ſuam partem adminiſtrant*: [illegible] * pro indiviſo, ſufficit *unum* [illegible] aliquid gerere, reliquis ignorantibus aut abſentibus: [illegible] *de adm. tut.* [illegible] *de curat. furioſ.* Carpz. [illegible] (*Diff.* [illegible]) modo reliqui non *contradixerint*. [illegible] *de curat. furioſ.*

*Officium tutorum* [illegible] principaliter vertitur circa pupilli perſonam, [illegible] minus principaliter *circa bona* [illegible] adminiſtranda. [illegible] Tutor * *POTEST* omnia adminiſtrare [illegible] abſque pupillo, inſtar Domini, etiam in judicio: [illegible] modo *adminiſtret*, [illegible] non etiam pupillum ſpoliet. [illegible] Excipiuntur tamen certi caſus, ubi neceſſario pupillus agit, tutore auctore: ut (1) Procuratoris *conſtitutio* [illegible] ante lit. conteſt. [illegible] *de procurat.* (2) hereditatis acquiſitio, [illegible] *C. de jur. delib.*) niſi pupillus adhuc ſit *infans*. [illegible] *C. de jur. delib.* bon. poſſeſſ. tamen petit ac *agnoſcit*. [illegible] *de B. P.*) Item donare non poteſt [illegible] *de donat.* quod ſi fiat, dominium non transfert [illegible] *C. de præd. & al. reb. min.* niſi ſint tutores illuſtrium aut nobilium, *Gail.* [illegible] (nam hi *modice* [illegible] donare poſſunt nomine pupilli. [illegible]) aut donent ex *juſta cauſa* [illegible] aut propter ſummam pupilli utilitatem: [illegible] *Gail.* [illegible] *Carpz.* [illegible]

* *NECESSARIO* debet utilitatem pupilli intendere, e. g. petat bon. poſſ. [illegible] *de bonor. poſſ.* Si pecuniam ſinit otioſam, uſuras præſtare tenetur [illegible]

[illegible]. aut extra ordinem coerceatur, [illegible] modo debitorem idoneum, aut primùm vo[illegible] invenerit, [illegible] *C. de usur. pup.* quod pupillus *probare tenetur.* [illegible] & satis probat, si tutor proprium pecuniam bene locaverit [illegible]) quod tamen aliquo modo est [illegible] *N.* [illegible] h. Hodie generali fere consuetudine [illegible] [(c)] tutores ob pecuniam otiosam. [illegible] Debitum exigat ac solvat, inde liberatio ipso jure contingit [illegible] Hodie de rerum *quandoque* [(d)] ad hoc requiritur [illegible] Transigit. [illegible] *de transact.* Actorem constituat suo periculo. [illegible] hodie absque magistratus decreto [illegible] Praestat *levem culpam*, [illegible] interdum tamen [illegible] Moneat *pupillum*, [illegible] ut curatorum petat. [illegible] Novum opus [illegible]

## *Notæ variorum.*

(1) [illegible]

(2) [illegible]

(3) [illegible]

(4) [illegible]

(5) [illegible]

(6) [illegible]

(7) [illegible]

(8) [illegible]

[illegible]

[illegible]

[illegible]

[illegible]

Tutor pecuniam pupillarem ut otioſam ſervans non vacat ſuſpicione.

(35) [*Puniuntur*] Quia non vacat ſuſpicione pecuniæ in rem ſuam verſæ, qui pecuniam otioſam ſervavit. Conſultum itaque eſt tutori, ut ſi occaſionem ſecuram non habeat, *magiſtratum* competentem adeat, illique exponat, ſe pecuniam pupilli otioſam habere, eaque propter petere, ut *Magiſtratus* oſtendat viam, pecuniam illam ſecure exponendi. *a. l. f. C. d. uſur. pupill. add. Brunn. cent. I. Dec.* 81. Quod ſi alicui credere velit pecuniam, optimum pariter conſilium eſt, ut *Magiſtratum* adeat, & ab eo decretum petat, an huic vel illi pecunia pupillaris credenda. *Stryk. Mencke.*

Cautela pro debitore pupillari, ne ſolo conſentire tutoris ſolvat.

(36) [*Quand. quo*] Si quis pupillo ſolvere velit, & ab omni periculo immunis eſſe cupiat, non contentus ſit autoritate tutoris, ſed prævio Decreto judicis ſolvat, quæ demum eſt pleniſſima ſecuritas. Si enim pupillus pecuniam aliter ſolutam male conſumeret debitor, adhuc ſemel ſolvere teneretur. *Stryk.* Succeſſores conſcripta ab Anteceſſoribus nomina ſuſcipiunt quidem & exigunt, ſed non ſuo periculo, *l. 35. ff. h.* niſi ea agnoverint tanquam idonea. *l. 44. ff. h.* Salutaris igitur eſt de iis non agnoſcendis proteſtatio. *Schilt. Ex.* 37. § 98. *Mencken.*

Tutor ſalarium accipiens, tenetur ad culpam leviſſimam.

(37) [*Leviſſimam culpam*] Quod ſi ſalarium acceperit, ad leviſſimam tenetur, *v. Diſſ. de tutela-tore profeſſo c. 2. § 23. Stryk.* Damnum culpa datum reſarcire tutelas pupillorum debuit. ne ſicut una pupillaris aut minorum, quam propria curarentur negotia, maxima vero diligentia in officio neceſſario, ex quo adminiſtrantes nullum capiunt emolumentum, exigenda non fuit, ne tutores nimis onerarentur, *l. 2. l. 7. C. arbitr. tut. ff. d. tut. & rat. diſtr. Strauch. Ex. 31. th. 38.* ... *vel negotium fuerit difficile*, in quo facile bonam patiuntur labuntur e. g. Immobilium comparatio, tum enim latam culpam tantum præſtari volunt. *l. 7. § 2. ff. h. Tutor & curator ſua ſponte quaſi ſe obtulerit*: tunc enim maximam diligentiam promiſiſſe videtur. *a l. 35. § 3. ff. d. Furt. Mencke.*

(38) [*Tantum latam*] Exemplum eſt in *emtionibus* prædiorum, cum enim lex hanc contineat immobilium minime tutori, ſatisfeciſſe cenſetur officio ſuo tutor, ſi ordinariam diligentiam adhibuerit. In *herede* tutoris hoc ſingulare, quod ſemper tantum de lata culpa defuncti teneatur, *l. 1. C. de hered. tut. Stryk.*

Heres tutoris ſemper de lata tantum culpa defuncti tenetur.

(39) [*Pupillum*] Adepta pubertate, ſive illo tempore, ubi tutor vel rationes reddere, vel a pupillo diſcedere capit. *Stryk.*

(40) [*Nunciat*] Si forte quis in pupilli præjudicium ædificet. *Stryk.*

Tutor nomine pupilli novum opus nunciat.

# *TITULUS IIX.*

## *Cod. V. 59.*

## De autoritate & conſenſu tutoris & curatoris.

D *Autoritas* [1] hic eſt expreſſa a tutore præſente pure & in continenti facta approbatio ejus, quod ab alio cum pupillo geritur. *§. 2. I.*

C Requirit eam Jus Civ. Interponit *TUTOR VERUS*, [2] (de falſo tutore agetur *ad tit. ſeq. 6. lib. 27.*) Supplet etiam interdum tutoris auctoritatem magiſtratus, ſc. ſi res ad ſui perfectionem alias non requirit *decretum* [3] *f. C. ſi propter penſit. publ. 7. §. 2. de min. 7. C. qui admitti. ad bon. poſſ.* tum enim ſubſiſtit negotium per tuitionem prætoris. *1. §. 5. quod falſ. tut. vid. Beiſ. de ſtatut. pact. & conſuetud. famil. nobil.* Si plures ſint tutores, quid juris? *vid. præced. tit. PRÆSENS. 9. §. 5. h. §. 2. I.* corpore ac animo. *1. §. 1. l. 14.* (*Diſſ. Bach.* [4] *& Hahn. ad W. h. n. 5. Bach. V. 2. D. 1. th. 6. lit. E. propter 25. §. 4. de A. v. O. H. 31. de uſucap.*) Nolente tutore auctoritatem præſtare in re notorie utili, magiſtratus eam ſupplet: *arg. f. C. in quib. cauſ. in integr. reſt. neceſſaria non eſt.* Tutor interim tenetur actione *tutelæ.* [5] *17. h.*

O In negotiis a pupillo cum alio geſtis; hinc requiritur (1) in pupillo aliquis intellectus, (qui adeſt poſt annum VII. *§. 10. I. de inut. ſtip.*) quod tamen remiſſum in *poſſeſſione* [6] acquirenda, *32. §. 2. de A. v. A. P.* (2) ut res ſive negotium geratur, & quidem in judicialibus ſemper requiritur autoritas: *4. C.* (hodie tamen in minoribus criminaliter accuſatis *neceſſaria non eſt.* [7] *Car. prax. crim. §. f. q. 10. 11.*) idem eſt in

in extrajudicialibus, ubi obligatur, [illegible] aut in genere conditionem ſuam deteriorem facit [illegible] nam niſi hic interveniat autoritas, nec etiam eſt ipſo jure nullum; neque pupillus naturaliter obligatur, [illegible] Niſi ſit locupletior factus. [illegible] (1) Ut etiam tertio geratur, nam in ſuam rem tutor auctor fieri non poteſt [illegible] & emtus a pupillo, (non etiam a contutoribus, vel ſub haſta, vel a creditoribus diſtrahentibus, [illegible]) licet per tertiam perſonam, [illegible] amittit rem, ac quadruplum pretii ſolvere tenetur, [illegible]

Negotium authoritate tutoris geſtum, ipſo jure valet; [illegible] Læſus pupillus tamen reſtituitur [illegible] in integrum, vel contra tutorem agit, prout [illegible] II

Hodie ſoli tutores plerumque res pupilli *adminiſtrant*, [illegible] J.N.

## *Notæ variorum.*

[illegible] [*Ad valore*] *Autoritas* [illegible]

(1) [*Autoritas*] [illegible]

[illegible] (2) [illegible]

[illegible]

(2) [*Tutor* [illegible]] [illegible]

(3) [illegible]

(4) [illegible]

[illegible]

[illegible]

(8 [illegible]

(9 [illegible]

(10 [illegible]

(11 [illegible]

(12 [illegible]

# TITVLVS IX.

*V. Cod. 39.*

# Quando ex facto tutoris vel curatoris minores agere vel conveniri poſſint.

A His *explicatur* (1) * *an & quatenus* ex facto tutoris pupillo res acquiratur? Sc. acquiritur pupillo poſſeſſio ac per eam dominium, ſc. ſi pupilli nomine emta: *1. C. per quas perſon. 1. C. de A. & R. P. 20. §. ſ. de A. R. D.* nam ſi ſuo nomine tutor pecunia pupilli emit, tutori quidem acquiritur, *6. C. de R. V.* poteſt tamen pupillus utiliter vindicare, *2. C. quand. ex fact. tut.* aut actione tutelæ pecuniam cum uſuris centeſimis repetere, *3. C. arb. tut.* atque tum etiam habet tacitam hypothecam, *vid. ſupr. ad tit. quib. mod. pign. tac.*

a. B b. (2) * An & quatenus pupillo contra tertium, ac tertio contra pupillum, detur actio. Sc. ſi contraxit * pupillus auctore tutore, actiones illi & contra eum ſimpliciter competunt; * ſi tutor pupilli nomine, tum actiones tutori ac contra eum dantur, ſed tantùm *ratione officii* arg. 19. de R. C. (unde tutor regulariter tutela finita non convenitur. 1. C. h. 10. eod. fin. C. de adm. tut. Berl. p. 1. dec. 13. num. 1. Carpz. p. 1. reſp. 77.) Niſi (1) *dolum* in adminiſtratione admiſerit: 13. §. 7. de A. E. V. 45. §. 1. de adm. & peric. tut. Carpz. p. 2. c. 11. d. 40. n. 3. Berl. d. l. n. 2. (2) tanquam fidejuſſor intervenerit: 15. C. de adm. & peric. Ca. p. 2. c. 11. d. 40. (3) proprio nomine, quamvis de rebus pupilli contraxerit, arg. 67. de proc. 3. §. 2. de adm. rerum ad civit. pertin. Berl. d. l. ſc. ſi heredum ſuorum tacita mentio, Berl. p. 1. dec. 14. tum enim obligantur heredes, licet tutor officii mentionem fecerit. Berl. p. 1. dec. 15. modo deliberato hoc factum ſit, ſecus enim eſt, ſi ex communi notariorum conſuetudine, Ca. p. 2. c. 19. d. 1. n. 6. (ad 3. O. 27. n. 20.) Pupillo autem & contra eum dantur utiles tantum, 4. C. maxime finita tutela. 26. in f. C. de adm. tut. 5. §. 1. 7. ff. 1. C. h. non etiam directæ. 11. de O. & A. f. C. quando ex fact. tut. 1. §. 6. de pign. act. niſi propter *commune*, 9. §. 1. de R. C. propter 13. de A. R. D. Barb. de aſſ. D. 3 th. 11. dummodo in utilitatem pupilli verſum, 3. C. *quod probet creditor*, arg. Aut. hoc jus 10 f. C. de SS. Eccleſ. vid. Ca. 1. reſp. 78. n. 4. 5. 12. Hinc etiam pupillus ſtare tenetur contractibus à tutore initis Ca. 1. reſp. 78. n. 4. 5. modo tutor b. f. contraxerit; nam ſi dolo aut culpa, pupillus non poteſt conveniri; 3. pr. ſed *tantum ipſum* 15. §. 7. de A. E. niſi ex illo dolo pupillus locupletior factus, tum enim eatenus tenetur. 15. §. 7. de A. E. 3 pr.

a. (3) * De tertio effectu, an ſc. & quatenus pupillus ac tutor ſibi invicem obligentur, agetur ad tit. 3. lib. ſeq.

*Notæ variorum.*

Factum tutoris, nocet pupillo. [*Ad rubr.*] *Factum tutoris* ... *factum pupilli*, quatenus ſc. Tutor ſolvendo, ut damnum reparare poſſit. Quatenus verò Tutor non ſolvendo, ... [illegible] ... pupillus ſit minus ... vel quæ ... (1) nomine pupilli & curatoris, vel (2) pupilli & tutoris ... Tutor ſuo nomine quidem, ſed ... pupilli ... pupillum ... [illegible] ... [illegible] ... pupil-

Res quæſita pupillo ... (1) [*Hic explicatur*] ... [illegible] ... [illegible]

[illegible]

(2) [illegible]

(3) [illegible]

(4) [illegible]

(5) [illegible]

(6) [illegible]

(7) [illegible]

(8) [illegible]

(9) [illegible]

(10) [illegible]

*modo credam probet muneris in rem minili-tatem pupilli verſam*

verſa, quæ planè pro illa, nummis ipſorum non deficientibus, impendi non debuit. Cum verò notæ redditas, approbataque rationes vix liquere poſſit, annon ex propriis pupillorum minorumvè, pecuniis neceſſitatibus tutelæ, curavè ſatisfieri potuerit, manifeſtum eſt, creditorem magenti prohendi difficultate premi, ut omninò cavendum ſit à mutuo cum tutore, curatoreve ineundo. *Berg.*

(11) [*Tenentur ipſi inter*] Dolus enim inducit obligationem perſonalem ſtrictam, Hinc alteri nocere nequit, niſi ille commodum ex dolo habeat. *Bergh.*

# TITULUS X.

*Cod. V. 43.*

# De ſuſpectis tutoribus & curatoribus.

C Suſpecti ſunt *ex LL. XII. tab.* (1) *1. §. 2.* Accuſantur coram magiſtratu, majori ſc. *1. §. 11. ad SCt. Turpil.* cui hæc poteſtas eſt ordinaria, *1. §. 4. h. 4. de offic. ejus cui mand.* Hodie omnibus magiſtratibus competit, qui habent *inferiorem juriſdictionem,* (2) denen die Bürgerliche Gerichte zuſtehen. Magiſtratus removet

C ſuſpectos, vel ex officio, vel imploratus: *Poſtulant* (3) * aut *juris neceſſitate,* (4) contutores ac concuratores, *etiam honorarii,* (5) *3. §. 2. de adm. tut. 1. C. de peric. tut. 3. C. h. 2. C. de div. tut.* nec excuſantur dicentes, quod præſtiterint *ſatisdationem:* (6) *1. §. 6. h.* A

* aut libera voluntate, E

quod facere poſſunt regulariter omnes de populo, *§. 3. I. h. 1. §. 6.* etiam fœminæ, *§. 3. I. L. 1. §. 7.* & cum propinquorum conſilio adoleſcentes, ſc. extraordinaria perſecutione: *§. 4. I. h.*

*NON* etiam *pupilli.* (7) *d. §. 4.*

*Omnes tutores* (8) & curatores, *§. 1. I. L. 1. §. 5. h.* (Legitimis tamen rectius adjungitur curator; *9.* ſi tamen removendi, illorum famæ parcetur. *§. 2. I. L. 1. § 5. h. arg. 9. de obſeq. parent.*) qui non *ex fide* (9) adminiſtrant, *§. 5. I.* ſive admittant dolum ſive culpam, *3. §. 5. 4. §. 5. 7. § 1. latam ſc.* (10) *arg. 7. § 1. h. vid. 7. C. arbit. tut.* (*obſ. 5. §.* (11) *5. 4. §. 5.*) *C. J. A. h. Bicciuo in aur.* licet adhuc nihil adminiſtraverint, e. g. ſi inventarium non confecerint, *2. C. ſi tut. vel curat. 4. §. 5.* *NON* etiam ſubjecti ſunt propter *paupertatem.* (12) *1.* O

Per decretum removetur: cui cauſa neceſſario inſerenda *4. §. 1.*

B Suſpecti * poſtulati officium *quieſcit,* (13) ejusque vices curator ſuſtinet, Q

b. * condemnati officium finitur, ſiquidem ob dolum hoc fiat, ſit infamis; *4. §. 2.* ſin vero ob culpam ſc. latam, *vid. ſupr. O.* (quod etiam factum creditur, ſi nulla cauſa eſt *addita.* (14) *4. §. 2.*) *non æque.* (15) *§. 6. I.* (*diſſ. Bachov. Vinn. ad d. §. 6.*) E

## *Notæ variorum.*

*Aliud eſt utrumque ſuſpectum poſtulare ejusque remotionem petere, aliud ad pœnam ipſi ut ſuſpectum agere.*

(1) [*Ex LL. XII. Tab.*] H. e. *LL. XII. tab.* permittunt, eos tanquam ſuſpectos accuſare. *Bergh.*

(2) [*Inferiorem Juriſdictionem*] Hoc ita, ſi tantum agatur ad *removendum* tutorem; Quod ſi verò præter remotionem pœna aliqua ipſi ſit diſtanda, ſc. relegatio vel gravior pœna, mulctam enim vel carcerem dictare poteſt judex inferior, ille judex tantum competens erit, cujus *Juriſdictioni criminali* tutor eſt ſubjectus, *Brunn. Ex. Juſtin. 5. ad § 1. h. t. n. 1. & 2. 5. 37. Bergh.*

(3) [*Poſtulant*] Poſtulatio ratione modi fit, vel *per actionem civilem* hodie, ut *imploratione officii judicis,* qua à conjunctis maximè *arg § 3 I. h.* tutoris aut curatoris ſuſpecti remotio petitur, *a. d. H. I. § 3 [illegible] I. 3. § 6. ff. h.* Quod ſi autem ille judex inferiorem tantum *Juriſdictionem* habeat, urgente admiſſi gravitate, tutorem remotum ad judicem, qui ſuperiorem *Juriſdictionem* habet, remittet puniendum, *a. l. 3 § 5 l. 2 ff. h. Schulz. Ex. 37. § 141.* Vel

LIBER

# LIBER XXVII.

## *TITULUS I.*

*V. Cod. 62. ſeq.*

## De Excuſationibus.

EXcuſatio [10] eſt imploratio officii judicis, qua quis ob juſtam cauſam ab one- D
re tutelæ ac curæ ſe petit liberari.

*EXCUSANTUR* omnes tutores & curatores, modo *valide* [11] ſint con- C
ſtituti, [illegible] § [illegible] legitimi. [illegible] C. *de legit. tut.* [illegible] C. *qui dare tut.* teſtamentarii,
§. [illegible] I. [illegible] § [illegible] (qui tamen propter excuſationem privantur legato relicto in teſta-
mento, ubi ſunt etiam tutores dati. Secus eſt, ſi *abſque conſideratione* [illegible] tutelæ ipſis
aliquid legetur. [illegible] § [illegible]) modo non *promiſerint* [illegible] pupillorum patri ſe tuto-
A res futuros. [illegible] §. [illegible] *de teſt. tut.* *PROPTER cauſam* [illegible] veram, nam falſæ C.I
allegationes à periculo non liberant: [illegible] C. *ſi tut. falſ. alleg.* [illegible] ejuſmodi abſolutio
eſt ipſo jure nulla: [illegible] C. *ſi tut. falſ. alleg.* contra [illegible] *de re jud.* [illegible] *ſi ex*
a *falſ. inſtr.* [illegible] juſtam ſe liberat
B [illegible] a delata & inchoata: (1) *Morbus ſontious.* [illegible] ſc. qui rei gerendæ eſt im-
pedimento: [illegible] *de re jud. vid. L.* [illegible] §. [illegible] *de adduct.* (2) Lis ſupervenienti de majori
bonorum parte. [illegible] Sed hæc *hodie non admittitur.* [illegible] *Nov.* [illegible] *cap.* [illegible] (3) *Abſentia* [illegible]
reipubl. cauſa, a ſuſcepta liberat per tempus abſentiæ, a ſuſcipienda intra annum:
§. [illegible] *Inſtit.* [illegible] §. [illegible] (4) Translatio domicilii Magiſtratus *[illegible]* [illegible] ſtuda: [illegible] §. [illegible]
[illegible] (5) Aſſumtio in numerum conſiliariorum Principis, [illegible]
[illegible] a delata tantum. (1) Numerus liberorum ſecundum [illegible] Hodie quinque [illegible] libe- b.
rum, *Schultz ad I.* [illegible] *vid. [illegible] ad* [illegible] (2) Ætas, §. [illegible] ſc. quæ egreſſa [illegible] eſt
LXX. ann. [illegible] *de [illegible].* (3) *Numerus trium* [illegible] tutelarum vel curarum;
*L.* [illegible] C. *qui num. tut.* [illegible] § [illegible] Licet pater unam tantum, & *filius ejus* [illegible] tamb.
ſin duas habeat: [illegible] §. [illegible] interdum etiam liberat una, ſi ſit *ampliſſima* [illegible] §.
[illegible] Modo non ſint affectatæ, [illegible] § [illegible] aut *honorariæ,* [illegible] §. [illegible] aut
prope finem ſint, [illegible] aut omnino leves: [illegible] (4) Profeſſio libe-
ralium artium [illegible] § [illegible] *vid.* [illegible] §. [illegible] Modo quis diligenter *doceat* [illegible] §.
[illegible] C. *de profeſſ.* & *med.* [illegible] §. [illegible] *de* [illegible] C. *de colleg.* (5) Publicum
officium *adminiſtrantes* [illegible] & rerum principis procuratores, [illegible] Magiſtratus
majores, § [illegible] etiam minores in civitatum; [illegible] § [illegible] Non etiam minores. [illegible]
*Hodie excuſantur omnes* [illegible] magiſtratus, omnesque Profeſſores, etiam Gymnaſiaſtici:
*DD. ad* [illegible] Non etiam Doctores, *qua tales* [illegible] (6) Paupertas [illegible]
§. [illegible] de qua judex cognoſcit. (7) Literarum ignorantia, cum *ſimplicitate* [illegible] con-
juncta [illegible] § [illegible] (8) Inimicitiæ cum pupillo, aut parentibus ejus [illegible] (9) Si
tutor domicilium in alio loco habeat, [illegible] § [illegible] *de teſt. tut.* (10) Si quis tutor da-
tus ſit in loco quidem domicilii, ſed reſpectu earum rerum, quæ ſunt ultra centeſ-
ſimum lapidem, [illegible] §. [illegible]
[illegible] a cura in ſpecie liberatur, qui geſſit ejus tutelam, §. [illegible] *L.* [illegible] *L.* [illegible] C. [illegible] b.
*qui* [illegible] *Tit.* [illegible]

Q [illegible] compu[illegible] [illegible]

R [illegible]

## Notæ variorum.

[illegible]

[illegible] ſint, tametſi cæteræ legatum relictum conferunt. [illegible] quæ dependet ex voluntate teſtatoris. Vel dici poteſt [illegible] hunc teſtamento dediſſe tutorem. & promiſſionem [illegible]

[illegible] ſionem, ob verba ſin. d. l. [illegible]. Sed vocabulum [illegible]

[illegible]

[illegible]

(16) [illegible]

(17) [illegible]

[illegible]

rumpat. Porro per modum appellationis non ſtatim cauſæ excuſandi, ad ſuperiorem deferri poterunt, cum judices noſtri gaudeant juriſdictione patrimoniali, adeoque prima inſtantia illis regulariter integra illibataque eſſe ſoleat. *Titius.*

(24) [*Eſt tamen in arbitrio*] Non eſt § 16. *I. de excuſat. tut.* ibi, *debent junſtis est, non appellare.* Dixi, *junſtis est*, ne adverſus illud, *debent*, excipias, voculam, *debet*, aliquando conſilii eſſe, non præcepti, eſſeque idem, quod poteſt, § 4. *I. quod cum eo, qui in al. pot. eſt*, *negot. geſt. eſſe dic. ibique Pollman. n. 7. Pegenſ. num. 4.*

(25) [*Appellationis*] Verius eſt, primum allegandam eſſe excuſationis cauſam, & illa rejecta, demum appellandum, antea enim gravatus non eſt, v. *Zaſ. n. 9.* niſi forte judex per decretum tutelam injunxerit, ubi à decreto, ne lapſu 10. dierum in judicatum tranſeat appellandum. *Stryk.*

(26) [*Probata excuſatione*] H. e. Si cauſa ſufficiens eſt. *Stryk.*

(27) [*Tutoris periculum*] Ergò cautela pro tutore, ut interim cum proteſtatione adminiſtret. *Stryk.*

Tutor à rejectione excuſat. non appellare poteſt.

Pendente cognitione ſuper excuſatione tutor cum proteſtatione adminiſtret.

# *TITVLVS II.*

## Ubi pupillus educari vel morari debeat, & de alimentis ei præſtandis.

*V. Cod. 49.*

Pupillus educari debet regulariter *apud matrem*: (1) *1. C. N. 94. c. 1.* niſi *ad ſecundas nuptias* (2) proceſſerit: *arg. 3. 6. C. de ſecundis nupt. 22. circ. fin. C. de adm. & peric. tut. Carpz. 2. c. 11. d. 42.* Si tamen vitricus ſit vir bonæ famæ, judex cognatis * conſentientibus concedit, ut pupillus apud matrem educetur, *Carpz. d. l. Perez. in C. d. t.* U

A

a. * diſſentientibus (Prætor) conſtituit, ubi educari debeat, *1. pr. ſ. h.* qui reſpicit perſonæ, cui committat, vacationem ab omni ſuſpicione: hinc non facile concedit proximo agnato, *1 §. 1. in f.* propter ſpem ſucceſſionis, *2. C. h. vid. N. 118. c. 5.* aut ei, qui *pudicitiæ* (3) pupillæ inſidiatur, *5* aut cujus exemplo vita ac mores pupilli corrumpuntur, & hactenus poteſt Prætor recedere ab ultima diſponentis voluntate: *1. §. 1.* Si quem eligit prætor, ille *compellitur* (4) ſuſcipere pupillum, *1. §. 2. l. 1. in f. C. h.*

B Educationis modus conſiſtit in * alimentorum præſtatione: quæ * decernuntur vel a magiſtratu, *3. pr.* vel a tutore ipſo: *2. C. de alim. pub. præſt.* * præſtantur Q

C

c. à tutore, pro quantitate patrimonii pupilli: *2. §. 1. 3. §. 1.* ita, ut ex annuis reditibus ſemper aliquid ſuperſit, *4. §. 1. & 3.* & *huc reduci debet* (5) alimentorum quantitas, vel à patre, vel Prætore definita: *3. §. f.* Si de ſuo quid erogat tutor, datur illi tutelæ contraria: *2. in f. C. de alim. pup. præſt.* niſi modum exceſſerit, *2. §. 1.*

b in * proba *educatione*, (6) *12. §. 3. de adm. tut. 3. §. 5. & l. 4. h.*

### *Notæ variorum.*

Regulariter pupillus apud matrem educandus.

Mater blanda & vitrico bona.

(1) [*Apud matrem*] Ob ſingularem affectionem, quam illa erga liberos habere præſumitur. *Stryk.* Exaſtimiam, *l. 2. C. h. Mentze.*

(2) [*Ad ſecundas nuptias*] Sic enim & vitam & bona liberorum prioris mariti addicere præſumuntur marito ſecundo. *l. 22. C. de admin. tut.* Hoc tamen dubio, ergo, ſi de moribus ingenuis mariti conſtet, tunc aliter ſe habet. *Stryk.*

(3) [*Pudicitiæ*] Aut religioni impuberis in *Rep.* receptæ. *Schilt. h. Ex. 37. th. 163.* *Mencken.*

(4) [*Compellitur*] Non tamen ut ſuis ſumtibus alat pupillum, ſed tutorem ſubſidia ſuppeditare debere. *Stryk.*

(5) [*Huc*

liberorum præſumitur addicere ſecundo marito.

Si pupillus ipſa forent ab eoquem, cautum pp°.

(5) [*Sine eodem debet*] Quod in tabul. ſorte, ex mquam pupillum, ... [illegible] ... ipſa ſorte in abentum ... [illegible]. *Bergh.*

(6) [*...*] Quae in codem corpore & ... [illegible] ... l. 3. §. 5. ff. h. t. *Bergh.*

# TITULUS III.

## De tutelæ & rationibus diſtrahendis & utili curationis cauſa actione.

*V. Cod. 51.*

ACTIO TUTELÆ [1] eſt *perſonalis*, [2] civilis, quæ inter pupillum & tutorem agitur de eo, quod ipſi ſibi invicem propter adminiſtrationem præſtare tenentur. vocatur etiam interdum *arbitrium tutelæ*, [3] quia eſt bonæ fidei, §. 28. *Inſt. de act.* Eſt perpetua, 1. §. 23 h. t. C. *arbitr. tut.* Eſt directa, vel contraria. Illa datur pupillo, (*vid. in ſeq.*) hæc tutori: utraque utilis vel directa: illæ dantur curatoribus & adoleſcentibus. Oriuntur ex quaſi contractu. D H † C

Datur *DIRECTA* pupillo, ejusque ſucceſſoribus univerſalibus, 1. §. 17. contra tutorem & heredes, 1. §. 16. h. 12. C. *arb. tut.* *licet dolus* [4] intervenerit: 12. *eod. de O. & A.* v. 4. §. 2 *de his*, *qui not. infam.* (datur etiam *utilis negotiorum* [5] geſtorum, *tut.* 17. C. *de N. G.*) Hoc hic ſingulare eſt, quod propter levem culpam *non datur* [6] in heredes: 1. C. *de her. tut. vel curat.* (nam alias ex perſona heredum actionis conditio *non mutatur*, [7] 2. §. 2. *de V. O. Cu.* 2. *c.* 11. *d.* 33) niſi lis cum defuncto ſit conteſtata, aut defuncti *dolus intervenerit*, [8] 1. C. *de her. tut.* *Hahn. h. n.* 4. Si ſint plures conſtituti, ita, ut * quidam adminiſtrent, quidam non, conveniuntur etiam honorarii, ſi reliquos adminiſtrantes ſuſpectos non accuſarunt, 3. §. 2. *de adm. tut.* *ſic reliquis excuſſis*, [9] *d. L.* 3. §. 2. S P A

* omnes adminiſtrent, ſi quidem * omnes adminiſtrationem neglexerint, ſinguli in ſolidum *conveniuntur*, [10] 38. §. 1. *de adm. tut.* habent tamen *beneficium diviſionis*, [11] modo omnes ſolvendo ſint. 38. §. 1. *de adm. tut.* *junct. pr. d. l.* * quidam adminiſtraverint, quidam vero non, tum ſinguli in ſolidum obligantur, 55. *pr. de adm. tut.* *licet communi conſenſu* [12] aliqui tantum adminiſtraverint; 5. C. *de divid. tut.* Si tamen agatur propter malam adminiſtrationem, tum adminiſtrantes prius ſunt excutiendi: 5. C. *de div. tut.* 6. C. *a bis tut.* 38. §. 11. *de adm. & peric. tut.* Sin autem propter neglectam adminiſtrationem agatur, tum ceſſante beneficio excuſſionis datur ex æquitate diviſionis. 38. §. 11. *de adm. & peric. tut.* *Strav. Exerc.* 31. *th.* 39. * omnes adminiſtraverint, * pro indiviſo, ſinguli in ſolidum tenentur, & pupillus eligit, quem primum conveniat: 2. C. *de divid. tut.* habent tamen beneficium diviſionis, 1 §. 11. 12. modo omnes ſolvendo ſint. 1. §. 11. 12. v. 1. C. *de div. tut.* a. B b. b. C

* pro diviſo, ſcil. quod diviſio facta * a teſtatore vel prætore, tum ſinguli *ex ſua adminiſtratione* [13] tenentur, modo ſuſpectos mature ac b. f. poſtularint. 2. C. *de div. tut.* * communi contutorum conſenſu, tum ipſo jure ſinguli *in ſolidum* [14] tenentur; 2. §. *in f.* C. *de div. tut.* *Carpz.* 1. *Reſp.* 92. ex æquitate tamen datur beneficium excuſſionis. 5. C. *de div. tut.* 4 C. *arbitr. tut.* c. D d.

E * Præcipue ad rationes reddendas, 9 C. *arbitr. tut.* Jur. civ. finita tutela, 9. §. 4. O

Jure Can. & hodie *quamvis*, [7] *Clem. 2 §. [illegible], de religioſ. domib. Rec. I. de anno 1548. & 1577 tit.* von den Pupillen x. *vid. Carpz. p. 2. c. 11. d. 2. 5.* Per rationes hic *intelliguntur*, [8] (*u. e. §. 3. de edend. 13 in med. de condit. & demonſtr.*) (1) *inventarii* [9] exhibitio: hac contra omittentem juratur in litem, *7. de adm. tut. Hahn. h.* (2) Rationum computatio ac juſtificatio: *44. de condit. & demonſtr.* (3) Reſidui reſtitutio: *d. L. 13. tit. eodem. Carpz. 5. reſp. 63. n. 2. 3. 4.* Interdum etiam uſurarum præſtatio, ſc. *poſt moram*, [10] *32. §. 2. de uſur.* aut propter verſionem in proprios uſus, *1. C. de uſur. pup. 7. §. 12. de adm. tut. 38. de N. G.* aut ſi pecuniam otioſam *penes ſe reliquit*, [11] *vid. ſupr. ad tit. de adm. tut. in f.*

6. * Deinde etiam ad reſarciendum damna dolo data, aut culpa lata, levi, & ſi ſe tutelæ obtulerit, aut præ contutoribus adminiſtrationem oblata ſatisdatione poſtulaverit, leviſſima. *33 §. 3. de furt. Hahn. h. n. 3. vid. Ca. 2. c. 11. d. 20.* Contra doloſos & mixtim negligentes juratur in litem, *2. 4. C. de in lit. jur. Hahn. h.* non etiam *contra heredes*, [12] niſi & ipſi ſint doloſi, vel in culpa, aut lis cum defuncto conteſtata, *2. 4. C. de in lit. jur. vid. ſupr. ad tit. de in lit. jur. 8.*

Inſtituitur neceſſario in loco, ubi tutor *adminiſtravit*. [13] *1. C. ubi de ratiocin. 1 4. §. 1. de procur. 19 §. 1. 45. § 1. de jud. propter L. 2. in f. C. ubi de ratioc. Carpz. 2. reſp. 55.* U

De ſubſequente infamia, *vid. §. 6. I. de ſuſpect. tut.* R

De actione hypothecaria, *vid. ſupr. p. 440. 441.* D

*ACTIO* de rationibus *diſtrahendis* [14] & perſonalis, mixta (*obſ. 1.* [15] *§. 23. h.*) qua pupillus contra tutorem agit ad duplum ejus, quod tutor ex bonis pupilli abſtulit, & in rationes non retulit.

Oritur ex delicto: *1. §. 23.* eſt perpetua: *1. §. 23.* Datur pupillo & heredibus, C *1. §. 23.* adverſus tutorem *non etiam heredes* [16] *1. §. 23.* ad duplum veri pretii rei S ablatæ, *1. § 21.* quod continet etiam *rei æſtimationem*, [17] *2. §. 2. h.* Inſtituitur *finita demum* [18] tutela, *1 § f.* Hæc actio concurrit cum actione tutelæ elective, quatenus rem etiam perſequitur; cumulative autem, quatenus pœnam continet. adeoque hactenus etiam *poſt actionem tutelæ*, [19] directam poteſt intentari, *7. §. 1. commod. 55 de O. & A.* Poteſt etiam cum hac concurrere cumulative *actio furti*, [20] *2. §. 1. h. 1. Hahn. h. in f.* O SS

## *Notæ variorum.*

Minime etiam [illegible] opus [illegible] actio [illegible].

[*Ad ſtudium*] Actio [illegible] hoc nomine in jure non occurrit, ſi ergo [illegible] contra [illegible] velis, actio tutelæ [illegible] *Tr. d. A. 1. § [illegible] 24. Bergh.*

(1) [*Actio tutelæ*] Ex adminiſtratione obligationem reciprocam [illegible] tutorem & pupillum [illegible] quæ hac [illegible] Quæ [illegible] ex *Jure Naturali*, [illegible] tamen ex [illegible] promiſſione, [illegible] ſe [illegible] eſſe adminiſtraturum, [illegible] pupillo [illegible] promiſit, vel etiam quandoque ex [illegible]. Pupillum vero [illegible] Nemo [illegible] Quid [illegible] qua ſc. adminiſtrationem [illegible] ſtruntur, quibus hodie non indigemus, quamvis [illegible] nihil [illegible] ſuperflua etiam non [illegible] *Vinnius.*

Inter pupillum & tutorem [illegible] obligatio ex Jure Naturali.

(2) [*Perſonalis*] Quia oritur ex quaſi contractu. *Bergh.* [illegible] Si ex tutela adminiſtrata naſcitur actio, vel realis, ut hypothecaria, *l. 20. C. de adminiſt. tut.* vel *perſonalis*, & quidem vel *ex quaſi contractu* adminiſtrationis [illegible] *directam* & [illegible] vel *ex delicto* [illegible] *diſtrahendis*, quod [illegible] actionem de rationibus [illegible] *Mont[illegible]*.

Ex tutela adminiſtrata oritur actio realis vel perſonalis.

(3) [*Ad heredes tranſit*] Omnis enim perſecutio eſt in [illegible] *C. arbitr. tut. Bergh.*

(4) [*Contra dolum*] Dolus enim in contractu vel quaſi contractu admiſſus non [illegible] actio ad heredem tranſitur, [illegible] ad *pœnam doli*, ſed ad *reſtitutionem*, [illegible]

Dolus non impedit tranſitum ex contractu vel quaſi contractu ad heredes.

[illegible]

[illegible]

# *TITVLVS IV.*

## De contraria tutelæ & utili actione.

*Cod. V. 36*

D A*ctio tutelæ* CONTRARIA eſt perſonalis, vel perſecutoria, qua tutor agit contra pupillum ad conſequendum illud, quod ipſi ob tutelæ adminiſtrationem abeſt.

C Oritur ex quaſi contractu, §. 2. I. de obl. quæ quaſi ex contract. Eſt bon. fid.

N S O fid. §. 20. *I. de act.* perpetua, 3 §. f. *non famoſa*, (2) 6. §. f. *de his, qui not. infam.* Datur tutori & heredibus, 3. §. f. adverſus pupillum & heredes, 3. §. f. Ad id, quod tutori ob adminiſtrationem tutelæ abeſt, 3. §. 1. h. §. 2. *I. de obl. quæ quaſi ex contract.* vel *abfuturum* (3) eſt: *f. h. Carpz. 2. c. 11. d. 40. propter 7. quemadm. teſt. aper. 61. §. 5. de furt.* (modò expenſæ factæ ſint b. f. & utiliter, 3. *pr.* de quo cognoſcit judex, pro ratione intentionis tutoris, non ratione *eventus*, (4) 3. §. 7. *h.* 10. §. 1. *de N. G.*) cum uſuris, niſi ſibi antea ex pecunia pupillari potuerit ſatisfacere, 3. §. 1. *h.* 9. §. 5 *de adm. tut.* *NON* etiam ad *ſalarium* (5) 33. *in f. de adm. tut.* 58. *eod.* 38. *de N. G. vid. Carpz. 2. c. 11. d. 40. Berl. 1 dec. 154. n. 3.* niſi juſta ex cauſa ſtatutum ſit a magiſtratu, vel teſtatore, 33. *in f. Carpz. 2. c. 11. d. 40.* aut tutor alias operam ſuam pro certo ſalario locare ſolent, e. g. advocatus eſt tutor pupilli, & *libellos facit*, (6) *Berl. d. l. in f.*

## *Notæ variorum.*

(1) [*Actio tutelæ*] De fundamento obligationis pupilli & quod ad hanc aſſerendam quaſi contractu opus non ſit, jam diximus. Quod ſi promiſſio aliqua nomine pupilli, v. g. de ſalario præſtando, acceſſerit, tum eum inde naturaliter etiam obligari, certum eſt, hanc actionem nomina hac ſaltem Romanis debentur, cætera enim ex principiis communibus reſultant. *Titius.* Dividitur in *directam*, quæ ratione tutelæ, & *utilem*, quæ ratione curæ inter eum cujus cura adminiſtrata eſt, ad curatorem, finita cura *ex l. 14. C. de admin. tut.* competit, *l. 1 §. 2 ff h.* durante cura utilis actio negotiorum geſtorum de rebus ſingularibus accommodatur, *l. 16. § 1 ff d. tut. & rat. diſtr. ſ. l. 1 § 3 ff h. Mentzen.*

Actionem contrariam non infamare. (2) [*Non famoſa*] Quod generale in omnibus actionibus *contrariis*, cum etiam *directa* tantum agatur de fide rupta, hæc & ea ſola infamant. *Stryk.*

(3) [*Abfuturum*] V. g. Si fortè tutor pro pupillo fidejuſſerit, tunc ipſi in futurum quid abeſt, ſi fortè à creditore conveniatur. tenetur ergo pupillus à fidejuſſore liberare tutorem. Quod facit vel ſolvendo debitum, vel novam obligationem ſubſtituendo, *Brunn. ad Weſemb. h. 1 qu. 2. Stryk.*

De eventu nemo tenetur, niſi culpa ſua ei cauſam dederit. (4) [*Eventus*] Actio enim contraria non naſcitur ex utili geſtione, nec aliquis tenetur de eventu, niſi culpa huic cauſam dederit. *Stryk.*

Salarium tutor non petit, niſi ipſi à judice conſtitutum. (5) [*Salarium*] Officium enim tutelæ eſt gratuitum. Quod ſi tamen ſalarium ipſi à judice conſtitutum, rectè contraria actione petitur *l. a tutoribus 33. § ult. ff de adminiſtr. tut.* Quamvis conſultum ſit, ſalaria tutoribus conſtituere, vel partem aliquam reditum exactorum iis adſignare, quo eò promptiores ſint in expediendo officio *Stryk.* Nec *ad actum liberationis poſt redditas rationes l. 3 § 1 ff h.* Hodie tamen illa in liberationem vi adjectæ libello implorationis officii judicis rectè peti, optimè monuit *Schilt. ff Ex 37 § 183. Mentz.*

Operis extraordinariis tutor pretio poſtulare non tenetur. (6) [*Libellos facit*] Si ergo occaſione proceſſuum pupillarium alios clientes neglexit, in reparationem hujus lucri ceſſantis ſalarium petere poteſt. Vel tantum exiget, quantum in aliis cauſis neglexit *Stryk.* Nimirum Quot ei tutor operas non adminiſtrationis, ſed ſingulares, uti, ſi de artifex veſtem, vel ut agricola calceum agrum pupillarem præſtiterit. *Mentzen.*

# *TITULUS V.*

## *V. Cod. 45.*

# De eo, qui pro tutore, prove curatore negotia geſſit.

D D **A**ctio protutela (1) eſt actio perſonalis, quæ agitur inter Protutorem & pupillum, ad id, quod ſibi invicem debent ex tutela. Hæc actio non eſt illa negotiorum geſtorum, 1. §. 6. *h.* effectu tamen ab ea *parum differt*. (2) Protutor dicitur, qui tutelam tanquam tutor adminiſtrat, & quidem bona fide, vel etiam ſciens, ſe tutorem non eſſe, tamen abſque maligno animo. 1. §.

1. §.

6. Quæ ſupra de tutoribus dicta, ſic etiam hæc ad procuratorem pertinent [d] cum eorum hac uſurâ contrahere debet, [illegible] L. 6. & de neglectis tenetur, modò negotia ſua curarent. [e] [illegible]

Notæ Variorum

[illegible]

# TITULUS VI.

## Quod falſo tutore autore geſtum eſſe dicatur.

Hic prætor dat [a] RESTITUTIONEM in integrum læſis a falſo tutore, [illegible] modo ignorantes cum eo contraxerint, [illegible] aut minores ſint: [illegible] [b] ACTIONEM, [c] quod falſo tutore [illegible] eſt actio perſecutoria, contra falſum tutorem ad [illegible] competens. In-

C Introducta a [illegible] tutore [illegible] perpetuo exclusum [illegible]
S [illegible] Datur illa, qui falſo tutore auctore cum pupillo contraxerunt, & heredibus, [illegible] ac ipſi pupillo, ex hoc contractu læſo [illegible]
[illegible] qui dolo malo ſe tutores ſimularunt ac auctoritatem interpoſuerunt, [illegible] (non etiam contra heredes [illegible]) contra ſingulos in ſolidum [illegible] una tamen præ-
O ſtatione reliquos liberat [illegible] Ad omne intereſſe, etiam [illegible]
d. [illegible] Ratione actoris eſt rei perſecutoria, [illegible]

## *Notæ variorum.*

(1) [illegible]

(2) [illegible]

(3) [illegible]

(4) [illegible]

(5) [illegible]

(6) [illegible]

(7) [illegible]

(8) [illegible]

(9) [illegible]

# *TITULUS VII.*

## De fidejuſſoribus & nominatoribus & heredibus tutoribus & curatoribus.

*Cod. V, 57.*

T[illegible] actione (1) ex ſtipulatu (2) fidejuſſores, [illegible] (3) [illegible] & nominatores, (4) [illegible] & qui tutorem [illegible]

idoneos affirmaverunt: [illegible] C. de [illegible] plures fidejuſſores ab uno tutore conſtitutum non gaudere [illegible] beneficio diviſionis. [illegible] pluribus tutoribus dati, habent exceptionem diviſionis, [illegible] Pupillus eligit, an contra tutorem, an contra fidejuſſorem agat, [illegible] C. [illegible] novo tamen jure habent fidejuſſores beneficium ordinis. [illegible]

## Notae variorum.

[illegible]

# TITULUS IIX.

## De Magiſtratibus conveniendis.

*V. Cod. 75.*

H*æc actio* (1) ſubſidiaria eſt perſonalis, pupillis contra magiſtratus, qui in tutelæ *conſtitutione* (2) dolum vel culpam admiſerunt, competens ad omne damnum reſarciendum. Datur *in ſubſidium* (3) [illegible] *de tut. & rat. diſtr.*) *vid. Harpp. Reſ. lib.* [illegible] Introducta [illegible] tempore Trajani [illegible] C. Datur a lege, ob verum vel *quaſi delictum*, (5) (*Dn. S* [illegible] *d. act. ſubſid.* [illegible]) dum magiſtratus doloſe vel culpose [illegible] tutore, & cautionis exactione. [illegible] Magiſtratus *probat* (6) [illegible] ſufficit idoneos eſſe tempore *dationis* (7) [illegible] Datur pupillis, & heredibus [illegible] contra magiſtratus *minores* (8) [illegible] & pro virili, ſi culpoſi fuerint. [illegible] Sin vero doloſi, ſinguli *in ſolidum* (9) tenentur, & poteſt pupillus convenire quem vult. [illegible] Heredes non niſi ex dolo & lata culpa conveniuntur, quod hic ſingulare eſt. [illegible] Ad omne damnum. [illegible] *Hodie* (10) adhuc obſervatur. [illegible] *Dn. D. Schwendendorff.* [illegible]

### *Notæ variorum.*

(1) [*Hæc actio*] Magiſtratus [illegible] pupillis [illegible] Hanc [illegible] actio [illegible] quæ [illegible] *Romanos* [illegible] culpam [illegible] *Thom.*

(2) [*Conſtitutione*] Aut ſatisdatione [illegible] *Berg.*

(3) [*In ſubſidium*] Unde, quo plures perſonæ pupillo tenentur [illegible] *Magiſtratus* [illegible] Magiſtratus ob adminiſtrationem [illegible] Magiſtratum conveniendum [illegible] *de tut. & rat.* [illegible] Magiſtratus, quod [illegible] *Thom.*

(4) [*Cod.* 75] In hoc [illegible] *Magiſtratum* [illegible] *Berg.*

(5) [*Quaſi delicto*] Ex *quaſi delicto*, [illegible] ex *quaſi contractu*, quo *Magiſtratus* [illegible] *quaſi delicto*. Unde adverſus heredes quoque [illegible] culpa [illegible]

(6) [*Probat*] Singulare hoc eſt, quod cum alias pro Magiſtratu ſemper ſit præſumtio [illegible] pupillorum [illegible] debeat Magiſtratus [illegible] Magiſtratus probabat [illegible] *Conf. Diſſ. de Præſumt. pro Magiſtratu.* *Berg.*

(7) [*Dationis*] [illegible] Magiſtratum [illegible] *Berg.*

(8) [*Minores*] Quibus [illegible] *Magiſtratus* [illegible] *de ſer.* [illegible] Magiſtratus [illegible] *Berg.*

(9) [*In ſolidum*] [illegible] *Berg.*

Magiſtratus hic probare tenetur, [illegible]

Hæc actio [illegible] Magiſtratus [illegible]

(13) (*Modo*) [illegible] apparent culpa *Magiſtratus* [illegible] [illegible] cauteque. Licet ob difficultatem [illegible] [illegible] *Magiſtratuum* [illegible] hanc actionem. [illegible] [illegible] per *Ref. Pol.* de A. 1577 [illegible] 32. [illegible] *Magiſtratibus* [illegible] [illegible], in ea *Conſtitutione* [illegible] [illegible]. [illegible] [illegible] [illegible], poſtquam [illegible] [illegible] *Magiſtratus* [illegible]. *R. I.* de A. 1577 tit. 32. § 1. [illegible] *Carpz.* p. 2. c. 12. d. 42. [illegible] [illegible], [illegible] [illegible] [illegible], l. 2. § 6. ff. [illegible] [illegible] [illegible] 41. § [illegible] [illegible] [illegible] [illegible], l. 3. § 11. ff. [illegible], [illegible] [illegible], vel non, vel [illegible] [illegible], § 2. I. de ſatisd. tut. quod ad [illegible] [illegible] [illegible] [illegible] haud malè [illegible] [illegible] [illegible] ad ff. [illegible] [illegible] *Mamilyn.*

Magiſtratus [illegible] [illegible] [illegible] [illegible].

# TITULUS IX.

*Cod. V. 71. ſeq.*

## De rebus eorum, qui ſub tutela vel cura ſunt, ſine decreto non alienandis vel ſupponendis.

Res *pupilli* (1) * mobiles, quæ ſervando ſervari non poſſunt, tutor privata auctoritate vendat, ubi velit, modò juſto pretio ac bona fide: [illegible] C. de adm. tut. & ſi hic ſit moroſus, ejus periculo res perit. [illegible] de adm. tut. [illegible] C. eodem. A B

* quæ ſervando ſervari poſſunt, ut & * immobiles, (*vid.* 22. C. de adm. tut.) tutor etiam alienat; ſed requiritur ad id (1) juſta ac neceſſaria cauſa, [illegible] C. de præd. & al. reb. min. e. g. æs alienum *urgens*, (2) [illegible] dos, donatio propter nuptias, &c. [illegible] C. de adm. tut. [illegible] de jur. dot. ſumptus ſtudiorum, *Weſenb.* [illegible] *Carpz.* [illegible] (3) C. de præd. min.) Quæ probanda, l. 6. C. de præd. minor. Non etiam ſufficit *cauſa* [illegible], (4) [illegible] Inſ et cauſæ cognitio & decretum accedat. (2) Cauſæ cognitio, [illegible] C. de præd. min. ſc. convocat prætor conſanguineos, inſpiciunt [illegible] (5) &c. [illegible] (3) *Decretum judicis*, (6) [illegible] C. [illegible] vel ſive, (7) vel domicilii, [illegible] tutor elegerit. [illegible] C. de præd. & al. reb. min. *Berl.* p. 1. dec. 20. C D R R R R

*Deficiente decreto* (8) ex his alienatio eſt *ipſo jure nulla*, (9) ſc. quoad dominium pupilli. § 2. I. quib. al. non lic. [illegible] de [illegible] tut. [illegible] C. de præd. min. *Carpz.* [illegible] *vid.* [illegible] *Carpz.* [illegible] & lib. 1. & 5. *Reſp.* 80. niſi (1) defunctus *permiſerit* (10) rerum immobilium alienationem: [illegible] C. *quando decreto opus non eſt.* (2) Certæ rei alicujus alienatio ex ratione juris ſit neceſſaria, e. g. propter pactum de retrovendendo antea interpoſitum: [illegible] *arg.* [illegible] de fund. dot. [illegible] Aut (3) *decretum* (11) principis interveniat. [illegible] C. de [illegible] C. quand. decr. op. Convaleſcit tamen ſi major factus alienationem ratihabuerit, [illegible] C. [illegible] C. ſi maj. fact. alien. [illegible] (etiam [illegible] *adverſario*, (12) *arg.* 14. C. de procurat. [illegible] C. de [illegible] LL.) *expreſſe* vel *tacite*, (13) [illegible] C. ſi maj. fact. ſc. ſi tacuerit poſt alienationem ex titulo * oneroſo [illegible], (14) poſtquam major factus, [illegible] C. ſi maj. fact. [illegible] & [illegible] C. ſi [illegible] [illegible] *Carpz.* [illegible] * lucroſo, major factus X. vel XX. (15) annos. [illegible] C. ſi maj. fact.

## Finitur Tutela.

A B C Modis * communibus omni tutelæ ſpeciei, ex perſona * pupilli * (1) pubertate, pr. I. [illegible] pr. I. de pup. ſubſt. ſc. maſculi anno XIV. fœminæ anno XII. (de Jur. Sax. *vid. Carpz.* (16) [illegible] *Gilm.* [illegible] In communibus fœminæ XIV. annorum

ſunt

[illegible] In cauſa alimentorum [illegible] anno XIIX [illegible] anno XIV [illegible] ſi velit, continuare officium, abſque novo decreto: [illegible]
c. [illegible] & conſuetudinem. * (2) [illegible]
b. [illegible] * tutoris * ipſo jure,
D morte naturali & civili, [illegible]
d. [illegible] * officio [illegible]
[illegible] per [illegible] & remotionem [illegible].
e. * [illegible] (1) conditionis exiſtentia & adventu [illegible] teſtamentaria & [illegible] (2) [illegible] (3) [illegible]

## Notæ variorum.

[illegible]

(1) [illegible]

(2) [illegible]

(3) [illegible]

(4) [illegible]

(5) [illegible]

(6) [illegible]

[illegible]

[illegible]

[illegible]

[illegible] ne pat eſt, a. c. [illegible] X de his quæ fiunt a Præt. [illegible]

[illegible] l. 2. ß. 5. [illegible]

[illegible]

[illegible]

(11) [illegible] ] [illegible]

(12) [illegible] ] [illegible]

(13) [illegible] ] [illegible]

(14) [illegible] ] [illegible]

[illegible]

(15) [illegible] ] [illegible]

(16) Pod Corpo. ] [illegible]

(17) [illegible] ] [illegible]

(18) [illegible] ] [illegible]

(19) [illegible] ] [illegible]

[illegible]

nec altera ex altera conſequatur. Cura ætatis majorennitate expirat, nec ſexus cura citra decretum Magiſtratus confertur. Enimvero moribus hodiernis tutela uno contextu in curationem tranſit, & continuatur uſque ad perfectam ætatem, ut opus non ſit novo decreto. At inde ad curam ſexus minime rectè inferas. Nam tutela & cura in eo conveniunt, quod utraque eadem cauſa conſtituatur, ut minorum non ſit, quamobrem hodiernis moribus ex tutore, ſiquidem velit, ſine novo decreto *Magiſtratus* fieri queat curator; Cum è contrario alia ſit conſtituendæ curæ in minore, alia in fœmina cauſa. Prædictos mores, cum à norma juris communis deflectant, ſtrictè accipi oportet, nec ultra curæ ejuſdem generis terminos proferri. Igitur manifeſtum eſt, eum, qui curator fœminæ minoris fuit, ejuſdem, majoris factæ, curatorem in lucem non aliter, quam antegreſſa Magiſtratus confirmatione fieri poſſe, nec, quod ſciam, alio jure utimur. *Berg.*

(20) [*Morte naturali*] Et *quartus capitis deminutione*, §. 1 §. 4. *I. eod.* Eam igitur *hodieque per arrogationem ejus* extingui non ambigo, deliberatum vero, quo jus civitatis ab ipſo amittatur in [illegible] proximo locum habet. *a.* §. 1. *I. de obl. quæ ex del. Moncke.*

(21) [*Vid. tamen*] Hic dicitur, quod licet tutela finiatur morte, actio tamen tutelæ tranſeat ad heredes. *Bergk.*

Tutela dativa non recipit tempus vel conditionem.

(22) [*Dativa*] Regulariter dativa non recipit tempus vel conditionem, quando tamen is, qui teſtamento datus, ad tempus impeditus, interim à judice alius datur, qui ceſſante impedimento adminiſtrare deſinit. *Bergk.* Paulo diſtinctius ita dici poteſt: Dies & conditio ſuſpenſiva certificata ſolvit dativam, ſunt enim ſubſidiaria, adeoque teſtamentario exiſtente, dativa deſinit. Idem eſt, ſi conditio ſuſpenſiva teſtamentario adſcripta, deficiat, tum dimiſſo dativo, in ſubſidium [illegible] conſtituto, legitimus ſequi videtur, *arg. l. 11. pr. de teſtam. tut.* Dies & conditionis reſolutivæ exiſtentia ſolvit tutelam teſtamentariam. *Titius.*

Matrimonium matris ſolvitur tutela.

Uxor nonnunquam facit majorennem.

(23) [*Matrimonio*] *Matris* ſc. non autem matrimonio ipſius *minoris*, quia uxor neminem facit majorennem. Sed num ex matrimonio *puellæ* expiret curatela? Ita videtur, cum maritus ejus curator legitimus ſiat. Verum cum hæc contraria non ſint, Curatorem alium habere, & maritum habere, *ſolo* nuptiis cura non finitur. Si tamen maritus à *Magiſtratu* confirmaretur, aliud dicendum eſſet. *Bergk.* Finita autem tutela materna per novas nuptias *Nov.* 94. c. 2. atque tum non legitimæ, ſed dativæ tutelæ relinqui locum, *arg. l. 2. C. quand. mul. tut.* indicatum apud *Huber. præl. ff. de ſuſpect. tut. poſ.* 7. *Moncken.*

(24) [*Nullus*] Nam arrogatus utut jure *Romano* agnatus non maneat, manet tamen cognatus. Cognatis verò & agnatis tutela æqualiter hodie defertur, ſc. in *allodiis* non in *Feudis*. *Bergk.*

(25) [*Vid. tamen* §. 4.] Per minimam capitis diminutionem finitur legitima agnatorum tutela. Ubi ergo agnati cognatis ratione tutelæ præferuntur, ut in *Saxonia Carpzov. p.* 2. c. 11. d. 11. ibi minimæ capitis diminutione adhuc uſum aliquem ſupereſſe volunt. *Bergk.* Id hodie in *Saxonia* tamen per arrogationem agnationem [illegible] contingere poſſe puto. [illegible] *l. 1. a.* 23. *Moncken.*

# TITVLVS X.

*V. Cod.* 79.

# De Curatoribus & cura.

D. De curatore bonorum. *vid. lib.* 42. *tit.* 7. CURA hic eſt vis & poteſtas adminiſtrandi bona illorum, qui rebus ſuis præeſſe nequeunt, auctoritate publica conſtituta. 1. *C. de rupt.*

† Ratione cauſæ efficientis eſt vel Teſtamentaria, Legitima vel *Dativa*, (1) *Ratione objecti* (2) *Minorum*, (3) Furioſorum, *Prodigorum* (4) 48. *de adm. & peric. tut.* Ratione finis Honoris. Notitiæ vel adminiſtrationis cauſa conſtituti. 14. §. 1. 6. *de ſolut.*

C * Legis diſpoſitio defert tutelam furioſorum prodigorum, §. 2. *I. h.* 43. §. 3. *de procur.* 1. 7. §. 5. 6. *C. de curat. fur.* (non etiam minorum. *dd. LL.*) potiſſimum parentibus, 7. *pr. C. d. t.* deinde *liberis*, (5) 1 §. 1. *L.* 4. *h. t.* 12. §. 1. *de tut. dat.* A a

* A magiſtratu conſtituuntur in defectu teſtamentariorum & legitimorum, *vid. tit. de tut. dat. C.*

* non etiam teſtamento curator *dari poteſt*: (6) §. 1. *I. h.* 7. *C. de teſt. tut.* datus tamen a

Yyy yyy

[illegible] præfertur omnibus [illegible] Hodie curatores teſtamento [illegible] Conſtituuntur prodigis & furioſis [illegible] ad [illegible] propriam [illegible] etiam [illegible] conſtituuntur [illegible]

Conſtituuntur omnes, qui nec impediuntur, [illegible] nec prohibentur, ut generaliter omnes, qui tutores eſſe non poſſunt. [illegible] In [illegible] excluditur [illegible] Hæc tamen prohibitio hodie [illegible] Principaliter bonis, [illegible] Non principaliter perſonæ, [illegible] datur tamen interdum curator bonorum [illegible] ſub conditione, ne [illegible] & curator ei conſtituatur. [illegible] Aut ſi pater ſit prodigus, [illegible] Aut ſi filius [illegible] patre hereditatem [illegible] & pater [illegible] rebus [illegible] propter aliquem defectum [illegible] XXV [illegible] non tamen invitis, ſed petentibus. [illegible] aliquid agunt [illegible] (2) debitores [illegible] (3) Tutores [illegible] rationes reddere velint, [illegible] Hodie omnes tenentur accipere [illegible] arbitrii [illegible] corporis [illegible] Per tempus [illegible] curatorem [illegible] mente capto [illegible] ſed [illegible] Surdis & mutis. [illegible] Prodigis, [illegible] jus [illegible] judicis ſententiam, [illegible] poſt diligentem cauſæ cognitionem, [illegible] qui prodigus declarandus eſt [illegible] & [illegible] Si pater [illegible] prodigum [illegible] curatorem [illegible] Prodigo declarato, [illegible] Mercenario [illegible] curator non datur. [illegible]

De ADMINISTRATIONE Curatorum [illegible] ut ſupra de tutorum, [illegible] Et requiritur decretum, ut in [illegible] curator, [illegible] Hoc ſingulare eſt, [illegible] poteſt [illegible] [illegible] curatore [illegible] [illegible] pro non [illegible] habetur, nec ad heredem ejus tranſ-

committitur, *ſ. §. 1. C. d. t.* niſi ſit *paterno*, [sic] *Berl. 1. deciſ. 147.* Et contra: quicquid tutores facere prohibentur, illud & Curatores. *l. C. ſi maj. fact.*

D * *CONSENSU*, quem interponunt, minoribus principaliter contrahentibus, hoc agendum. Eſt autem hic conſenſus, approbatio ejus, quod cum minoribus vel ſimilibus perſonis geſtum eſt, (*t. 1. qui teſt. fac.*) à curatore facta, poteſt etiam negotio ſuperveniens ſufficere, *Hahn. ad tit. de auct. tut. Vinn. ad Peck. de re naut. p. 121. Fr. Ex. 3. q. 4. per Vaſchabus nem*, [..] *ſ. C. de SCt. Maced. Fr. Ex. 3. q. 4. Carp. 2. c. 13. d. 31.* E

O * In illis *NEGOTIIS*, ubi tutor auctoritatem interponit, hic curator conſentit: modò ex perſona gerente propter denegatum conſenſum non ſunt omninò nulla: ut eſt *in furioſo*, [..] *5. 40. de R. J.* nam hic conditionem ſuam meliorem facere poteſt, nec acquirere per traditionem, *11. de O. & A.* aut poſſeſſionem acquirere, *1. §. 3. de A. v. A. P.* niſi ex jure ad eum pervenerint: e. g. hereditas paterna. *Prodigus* [..] rectè negotiatur, *1 §. 1. de A. v. O. H.* modò conditionem ſuam meliorem faciat. *3. de nov. 6. de V. O.* nam deteriorem faciens, nec naturaliter obligatur. *arg. 6. de V. O. junct. 1. §. 1. 10. §. 4. de fidejuſſ.* Idem eſt in Minore, nam etiam hic, licet habeat velle, non tamen *habet poſſe* [..] ergo *nec naturaliter* [..] obligatur. *3. C. de in integr. reſt.* (*obſt. 41.* [..] *de V. O.*) niſi locupletior factus, aut dolo verſatus fuerit, aut de *tertii* [..] præjudicio agatur.

* *PERSONAM* ſibi ſubditam curator regat conſilio, *7.* quod tamen non eſt obligatorium. *21. de R. N. 1. C. de nupt.* e. g. in matrimonio, emancipationibus. Furioſum omnino diligenter tueatur. cujus perſonæ *potius* [..] datus videtur, quod hic ſingulare eſt. *7 pr. de cur. fur. 13 §. 1. 14. de off. præſ. 9. §. 2. ad L. Pomp. de parric.* Et quidem ſecundum LL. XII. tab. proximi *agnati*, [..] *14. de off. præſ. Carp. 4. Reſp. 11.* furioſum pauperem de ſuo alere *tenentur*. [..] Proximi cognati Tutores, qua tales, de ſuo nihil præſtare tenentur, *Carpz. 4. Reſp. 11. n. 15.* ſed in ſubſidium magiſtratus. *Carpz. 4. Reſp. 10. 11.*

E Propter adminiſtratam curam *datur actio* [..] utilis, ſc. *finito officio*, [..] *5. 14. C. de adm. tut. 1. §. 3 de contr. tut.* Directa, perſonis, quæ fuerunt in cura, *3. C. ar. tut.* Contraria curatori. *1. §. 1 de contr. tut.* Hæc idem obtinet, quod ſupr. ad tit. de tut. & rat. diſtr. & ſeq. dictum eſt. *47 §. 1. de N. G.*

Concurrit cum hac actio negot. geſt. quæ etiam durante officio datur, *tot. de adm. tut. 4. §. 3 in f. de tut. & rat. diſtr.* & quidem de rebus ſingularibus. *16. §. 1. de tut. & rat. diſtr.* Hodie contra Curatores actio *hypothecaria*, [..] *20. C. de adm. tut.* actio *protutelæ* [..] utilis, *arg. rubr. de eo, qui pro tut.* actio ſubſidiaria contra magiſtratum. *1. §. 4. de magiſtr. conv.*

F Finitur ex perſona * curandi (1) Sublato illo defectu: *pr. I. de cur.* furioſus autem plene debet reſtitui nam intervalla ſuſpendunt tantum officium. *6. C. de cur. fur.* Prodigus ipſo jure deſinit eſſe in cura, ſi bonos mores recepit, *1. pr. in f. de curat. fur.* ſc. ſi per biennium aut ultra frugaliter vivat. *Maſc. de prob. concl. 1214.* rectius *ſententiæ declaratoriæ* [..] hoc relinquitur, *Perez. ad d. t.* (2) Morte, naturali & civili, ut in tutoribus. (3) Arrogatione: *§. 4. I. quib. mod. tut. fin. ſ. C. de excuſ. præſ.* (4) Pubertate, ſi ſc pupillo datus ſit. *1 C. quando tut. vel curat. eſſe deſin.*

G * curatoris, ipſo jure, ſc. morte tam naturali, quam civili. Officio judicis, excuſatione vel remotione, *ut ſupr.*

## Notae variorum.

[illegible]

[illegible]

[illegible]

petit minori contra curatorem *utilitr*, qua ſpecialis actio curatelæ in jure non eſt prodita. *Stryk.*

(40) [*Finita officio*] Hodie quotus anno, cum *Reformatio Polit. d. A.* 1548. inter tutores & curatores non diſtinguat. *Stryk.*

Ius Curatoris æque ... tacite obligata ... pupillo competit.

(41) [*Hypothecaria*] Nam & hujus bona tacitè obligata ſunt minori, non à tempore damni dati, ſed à tempore ſuſceptæ adminiſtrationis. *Stryk.*

(42) [*Protutela*] H. e. Si quis pro curatore ſe geſſerit, qui talis non eſt, bona fide tamen hoc fecit. Imò *omnis actio quæ contra tutorem datur, utiliter* datur contra curatorem. *Stryk.*

(43) [*Sententia declaratoria*] Uti per ſententiam declaratur prodigus, ita per contrariam ſententiam ab interdictione bonorum liberandus, antea enim conſtare nequit, an cum ipſo ſecurè contrahi poſſit, vel non. *Stryk.*

# LIBER XXIIX.

## TITULUS I.

## Qui teſtamenta facere poſſunt.

***Junge L. 6. t. 22. C. qui teſtam. fac. poſſ. t. 23. C. de teſtam. & quemadm. teſt. ord. L. 3. t. 26. X. de teſt. & ult. vol.***

Teſtamentum hic eſt voluntatis *noſtræ* [1] *juſta*, [2] 4. ſententia de eo, quod quis poſt mortem ſuam fieri vult. 1. *h.* D

Origine *eſt Juris Gentium.* [3] Definitum Jure Rom. rectè teſtantur omnes, niſi qui * *IMPEDIANTUR* (habilitas requiritur tantum *tempore facti* [4] teſtamenti. *18. obſ. 1. §. 2. de B. Poſſ. ſecund. tab. Cz. 3. reſp. 62. n. 19.*) ut * (1) *FURIOSUS*, *40. de R. J. vid. ſupra de curat.* & *MENTE CAPTUS*, [5] *17. h.* niſi tempore intervallis *9. C. h. 6. C. de cur. fur. 20. §. 4. h.* tum enim validè teſtatur, licet redeat furor: *16. §. 2. de R. N.* quod etiam in dubio factum cenſetur, ſi teſtatorem habuiſſe dilucida intervalla certum ſit, ac teſtamentum legitime factum, *vid. Richt. ad L. 4. C. qui teſt. fac. Ludw. de ult. vol. p. 1. pag. 20. Mantic. de conject. ult. vol. lib. 2. tit. 3. num. 6.* nam furor *non præſumitur*, [6] *Renſu. V. 1. p. 2. c. 3. n. 6. de teſtam. propter 3. C. de codicill.* Summe *EBRIUS*, *Renſu. v. 1. p. 2. c. 12. n. 3.* ac *IRATUS* [7] *48. de R. J.* * (2) b.

*IMPUBES*, (quorum ætas *de die in diem* [8] computatur, *5. h.*) *§. 1. I. quib. non eſt permiſſ. fac. teſt.* licet tutoris auctoritas acceſſerit, *5. de R. J. 32. de H. I.* aut miles ſit, *5. C. de teſt. milit.* aut ad pias cauſas relinquent, *Renſu. v. 1. p. 2. c. 3. n. 32.* aut malitia ſuppleat ætatem, *Renſu. d. l.* aut pubes factus *deceſſerit.* [9] *1. §. 8. de B. P. ſecundum tab. c. 1. de reg. Canon.* minores rectè teſtantur, abſque *curatore*, [10] *4. C. h. 20. §. 1. de liberat. legat.* * (3) b.

*SURDI* & *MUTI*, ſc. *ſimul natura*, [11] Nam qui per accidens alternative mutus vel ſurdus fit, jure antiquo a principe impetrabat teſtandi facultatem, *7.* Novo jure rectè *teſtatur*, [12] *10. C. h. L. un. C. de theſaur. vid. Zach. lib. 1. tom. 2. c. 2. n. 8.* * (4) b. a.

De *COECO*, *vid. in ſeq.* * *PROHIBEANTUR*, * [1] qui cives Romani non ſunt, C *8. h. 32. de R. J. l. 17. §. 1. de pœn. L. antepen. cod. vid. Ant. omnes peregrin.* [13] *C. communia de ſucceſſ.* ut ſunt Servi, *32. de R. J.* ab hoſtibus capti, *8. pr. h. §. ſ. I. h.* licet poſtliminio *redeant* [14] *8. pr.* Teſtamentum antea factum valet, vel jure poſtliminii, vel Lege Corneliæ; hoc hodie non obſervatur apud Chriſtianos, niſi in bello *contra Barbaros.*

Servi

[16] Servi pœnæ, 8. §. ſ. Ultimo ſupplicio damnati, 1. ad L. Falc. quod aut hodie [17] mutatum: Bach. V. 2. D. 10. th. 2 lit. b. Ca. 3. q. 133. n. 20. 21. Perez. h. n. 4. (Diſſ. Rechter. p. 1. dec. 13. n. 2. Ca. 3. q. 133. §. propter N. 22. c. 8. N. 134. c. ſ.) Deportati, 17. §. 1. de pœn. 8. §. 1. & 2. 3. h. (ſecus eſt in Relegatis, 4. de interd. & releg.) quibus hodie ſimiles ſunt Banniti & proſcripti a Camera vel Imperatore, Ca. 3. q. 10. n. 20. non etiam aliorum Statuum [18] proſcripti. Ca. 3. q. 130. n. 18. Renſ. V. 2. c. 27. num. 7. vid. Grot. de J. B. P. lib. 2. c. 8. n. 1. * (2) Qui non ſunt patreſfamil. ut filiifamil. 6. 3. (niſi de Caſtrenſi pr. I. h.) licet pater conſentiat, [19] Ad. L. teſtamenti de peculio adventitio irregulari, 3. C. h. (obſt. 8. [20] §. 5. C. de bon. quæ lib. N. 117. c. 1. §. 1. aut clauſula codicillaris [21] adjiciatur. 11. §. 3. de J. codicill. 2. de Leg. 1. Neque ſubſiſtit, ut donatio mortis cauſa; hæc enim tantum fit per modum conventionis, & acceptationem, 31. d. m. c. donat. * (3) Prodigi, 18. pr. Ante prodigalitatem [22] factum teſtamentum valet. 18. * (4) Hæretici declarati [23] L. 4. §. 1. Aut. credentes C. de hæret. * (5) Apoſtatæ, [24] 3. C. de apoſtat. unde etiam Pœnitſicl. [25] Rechs. p. 1. dec. 77. n. 11. * (6) Uſurarii manifeſti, [26] c. ſ. de uſur. in 6. * (7) Inteſtabiles, qui propter carmen famoſum damnati. 18. §. ſ. * (8) Monachi. [27] Aut. ingreſſi C. de SS. Eccleſ. niſi liberis ſuis ante ingreſſum diviſerint patrimonium, quod ſic faciendum, ut ſibi reſervent portionem filialem monaſterio relinquendam. N. 123. c. 38. Aut. Si qua mulier C. de SS. Eccleſ. In dubio quilibet habilis ad teſtandum præſumitur, 5. de probat. Rosen. p. 2. c. 6. n. 9. Rechter. ad tit. C. de teſtam. in proœm. num. 14. 15. etiam in mortis articulo, Ca. 3. c. 3. d. 1. modo articulate loqui aut ſcribere ſciat. Ca. p. 3. c. 3. d. 2. L. 29. C. h. Nec facultas teſtandi per conventionem [28] poteſt impediri. 15. C. de pact. 4. de adim. leg. 22. de leg. 3. Rech. d. l. n. 10. Ca. 2. c. 10. d. 26.

Fiunt Teſtamenta mentis declaratione per vocem & literas, aut etiam nutu [29] (Ord. Imp. de ann. 1512 von den Notarien tit. 38. L. 29. C. h. Ca. 3. d. 203. n. 19.) cujuſcunque linguæ 21. ſ. C. de teſt. 15. C. h. etiam, per interpretandam [30] perſonam, modò teſtator ſit præſens, & in omnia ejus verba conſentiat, & hanc eſſe ſuam ultimam voluntatem dicat, arg. 8. verſ. & in C. h. Ca. 3. c. 3. d. 27. & 3. dec. 203. per 15. C. h.

Forma ſubſtantialis eſt heredis inſtitutio, [31] ſive hereditatis delatio, §. 34. I. de Legat. ſ. de jur. codicill. 3. de his, quæ in teſt. del.

D Quotuplex olim fuerit, vid. §. 1. I. h. Novo Jure eſt * vel PUBLICUM, quod D
E ſuſtinetur publica auctoritate ac fide, ut * (1) Teſtamentum Principi oblatum, [32] quod libello inſertum, principi offertur, ut ſcriniis inferatur, & publica ejus auctoritate ſuſtineatur, 19. 10. C. h. Requiritur hic teſtatoris ipſius (non etiam per procuratorem, [33] arg. obſt. 19. in ſ. C. de teſt.) oblatio. Ca. 3. d. 203. §. Et principis acceptatio: ſufficit ſimplex [34] 19. C. d. t. Hodie a tergo annotari ſolet, tantum ad perpetuam rei memoriam tempus inſinuationis, & fieri poteſt apud omnes Electores & Status inferiores, Barry de ſucceſſ. teſt. & inteſt. lib. 1. tit. 2. num. 3. Ca. de L. Reg. c. 11. ſect. 11.

* (2) Teſtamentum actis publicis inſinuatum ſive judiciale, [35] eſt ultima voluntas, quæ teſtator apud acta Judicis heredem inſtituit, ita, ut illorum fide ac auctoritate confirmetur. [36] Vid. 18. 19. C. de teſtam. vid. Diſput. de teſt. Jud. D

D * vel PRIVATUM: quod privata fide ſuſtinetur. Eſtque vel
† ſolenne, (de minus ſolenni. [37] ad Lib. 29. tit. ) * SCRIPTUM, quod in ſcriptis ſolenniter perficitur: §. 3. 4. I. de teſt. Nihil refert, an teſtator, 20. C. h. N. 119. c. 9. Aut. Et non obſervato C. h. an alius, etiam ſervus [38] ſcribat, 28. in quacunque materia, d.
D §. 16.

§. 12. *I. h.* ( [illegible] *R. I. de anno 1512.* §. Item ſollen ſich die Notarien auch hüten / qui non loquatur de teſtam. ſed [illegible] instrumenta) aut linguæ [illegible] § *f. C.* Modo ſaltem [illegible] § *z. de* [illegible] enunciata tamen per [illegible] recte expediuntur *Ca.* [illegible] Poſſunt unum Teſtamentum plures [illegible] fieri. §. [illegible] *de teſt.* [illegible] *de his, quæ in teſt. del.* Et plures [illegible] Teſtamento teſtari. [illegible] *de teſt.* [illegible] (*Diſſ.* [illegible] *ad I. h.* §. [illegible])

Solennitates ejus ſunt, ut fiat * (I) *actu continuo* [illegible] §. *f.* Hinc interrumpitur [illegible], [illegible] *de V. S.* [illegible] *C. de teſt.* (*Diſſ.* [illegible]) non etiam actu neceſſario. [illegible] *C. h.*

* (II) Coram Teſtibus (α) animo & corpore [illegible] & audientibus teſtatorem, [illegible] *C. h.* *Carpz.* [illegible] & (β) [illegible] præſentibus, [illegible] §. *f.* (γ) Intelligentibus teſtamentum fieri, licet linguam non [illegible] [illegible] §. [illegible] (δ) Rogatis, §. [illegible] *I. de teſt.* aut certioratis, ſi forte alias præſentes ſunt, quod hic actus debeat celebrari [illegible] (ε) *Numero ſeptem*, [illegible] §. [illegible] *C.* inter quos etiam [illegible] *Notarius* [illegible] *R. I. de ann. 1512.* Jure Can. II. vel III. ſufficiunt, [illegible] *de teſt.* quod obſervatur [illegible] * Jus civ. hodie obſervatur. *R. I. de ann. 1512.* Cujusque loci [illegible] hic inſpicienda: *Carpz.* [illegible] (ζ) Idonei (tempore facti teſtamenti) §. [illegible] *I.* ſc. qui non * impediuntur, ut furioſus. § [illegible] *I.* [illegible] habeat intervalla. [illegible] impubes, §. [illegible] *I.* ſurdus, mutus, §. [illegible] *I.* cæcus, [illegible] *C. de teſtam.* (*Diſſ.* [illegible])

* prohibentur * in genere prodigi, [illegible] §. [illegible] *de* [illegible] *f. h.* *Servi*, [illegible] *Mulier*, [illegible] § [illegible] *I. de Hermaphrodito*, [illegible] *de teſtib.* qui in ſpecie inteſtabiles dicuntur, ut ob carmen famoſum damnati. [illegible] §. *f.*

* in certis teſtamentis propter * poteſtatem (fictione unitatis) [1] Filius in teſtamento patris § [illegible] *I. de* [illegible] §. [illegible] *I. h.* [2] Pater in teſtamento filii, §. [illegible] *I.* ſc. ſi [illegible] teſtatur §. [illegible] *I.* [illegible] [3] Frater in teſtam. fratris, qui eſt in eadem poteſtate: § [illegible] *I.* non etiam prohibentur filius emancipatus, [illegible] *R. I. de anno 1512.* [illegible]; der Sohn / der in des Vaters Gewalt [illegible] *Harpprecht*, [illegible] (*Diſſ.* [illegible] *de teſt.*) aut in teſtam. matris, [illegible] *ad* §. [illegible] aut pater in teſtam. filii emancipati, aut pater ſpiritualis, aut præceptor, aut maritus, aut famulus mercenarius, aut frater emancipatus, aut patronus, quia hic deficit ratio *prohibitionis* [illegible]

* Negotium, quod geritur teſtamento, inter teſtatorem & teſtem. (1) *Heres ipſe*, [illegible] (2) Qui in ejus ſunt poteſtate. (3) Qui ipſum in poteſtate habet. (4) Frater in eadem poteſtate: § [illegible] *I. h.* Non etiam prohibetur *Legatarius*, [illegible] §. [illegible] *I.* Fideicommiſſarius particularis, *d.* §. [illegible] *I. h.* [illegible] *de* [illegible] aut heredis *conſanguinei* [illegible] extra vinculum poteſtatis. *arg.* [illegible] *I. h.* (*Diſſ.* *Ca.* [illegible])

* (III) Ut *ſubſcribatur* [illegible] ab omnibus teſtibus, propria cujusque manu: [illegible] §. [illegible]

* (IV) Subſignetur [illegible], [illegible] §. [illegible] hodie quovis ſigno [illegible] *R. I. de anno 1512.*

* (V) *Subſcribat* [illegible] teſtator. [illegible] *C.* niſi [illegible] teſtamentum ſcripſerit: [illegible] § [illegible] *C.* Scribere ignorans, adhibeat *octavum teſtem*, [illegible] *C.*

* (VI) Ut teſtator vel octavus teſtis nomen heredis ſcribat: [illegible] *C.* quod remiſſum poſtea per *N.* [illegible] *Et non obſervatur* [illegible] *C. de teſt.* Si aliqua ex his ſolemnitatibus omiſſa, tum ex tali imperfectio teſtamento

ine naturalis (m) obligatio oritur: Nam heres tantum obligatur ex agnitione voluntatis defuncti. vid. [illegible] de teſtam. c. 5 dub. 1. [illegible] (Diſſ. [illegible] de [illegible] [illegible] conſ. [illegible] de I. & I.) * NUNCUPATIVUM (n) eſt, quod ſolenniter fit per nuncupationem: Cujus requiſita (o) ſunt, ut fiat * [I] heredis manifeſtatio verbis ore prolatis, 21 §. 2. 26. C. [illegible] (1) ut audiant, qui adſunt: 26. C. (2) per ſolennem (p) nuncupationem, 26 21. C. [illegible] §. [illegible] [illegible] hinc pure civili [illegible] (q) teſtamentum [illegible]. (ſc. quod fit per relationem ad ſcripturam, quam teſtator producit, dicens, ſe heredem inſtituere, quem in hac ſcheda nominavit, & hanc eſſe ultimam ſuam voluntatem.) Hodie tamen valet. [illegible] conſ. [illegible] Beſold. [illegible] conſ. [illegible] Carpz. [illegible] Roſb. [illegible] conſ. [illegible] Tabor. ad Weſ. b. Quemadmodum etiam hodie ſufficit, ut teſtator nuncupativus declaret notario voluntatem, ut ille coram teſtibus eam reddat in ſchedam, & interroget teſtatorem, an haec ſit ejus voluntas ultima, modo teſtator hoc affirmaverit: Et hoc non fit ſcriptum teſtamentum, ſed nuncupativum in ſcripturam redigitur, quae probat, tanquam inſtrumentum a notario factum. (r) 26. C. b. Carpzov. [illegible]

Neque valet teſtamentum nuncupativum, actibus extraneis interruptum. [illegible] C. b. Carpz. [illegible] 26. C. b. * [II] Coram teſtibus, 21. §. 2. C. idoneis de quo ſupr. ad tit. ſcript. (Hoc hic ſingulare eſt, quod teſtis eſſe poſſit, qui literas neſcit, non autem qui linguam non intelligit, [illegible] ut ſupra. 26. C. b.) qui ſponte adſint, 20 §. [illegible] b. 21. C. b. rogatis. 21. §. 2. teſtatorem videntibus & audientibus, [illegible] 26. C. Reliquas (s) ſolennitates in hoc Teſtamento remiſſas. 26. C. b.

## Notae variorum.

(m) [Naturalis] [illegible]

(n) [Juſta] [illegible]

(o) [Eſt juris Communis] [illegible]

(p) [Tempore facti] [illegible]

(q) [In eadem tempore] [illegible]

(r) [Non proclamatur] [illegible] l. 22. ff. de Probat. [illegible]

(s) [Reliquas] [illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

(46) [illegible]

(47) [illegible]

(48) [illegible]

49 [illegible] Quo quidem [illegible]

(50) [illegible]

(51) [illegible]

(52) [illegible]

(53) [illegible]

(54) [illegible]

55 [illegible]

(56) [illegible]

57 [illegible]

58 [illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

# TITULUS II. V.

## De liberis & poſthumis: De heredibus inſtituendis.

*Jung. l. 6. C. [illegible] Nov. [illegible]*

D Heredis inſtitutio eſt [illegible] heredis denominatio, a teſtatore, *directis* [illegible] verbis facta.

Eſt vel prima, vel ſecunda, ſive ſubſtitutio [illegible], *de qua* [illegible]. Prima inſtitutio in ſpecie ſic dicta, eſt vel * *NECESSARIA* quæ fit ex juris neceſſitate, ſuarum perſonarum quæ neceſſario vel *inſtitui*, vel exheredari debent. *EXHEREDATIO* eſt excluſio a futura hereditate, in teſtamento, verbis expreſſis facta, [illegible] vel [illegible]. *Ratione cauſæ* [illegible] vel ſine parte. Sui neceſſario inſtituendi vel exheredandi ſunt liberi, quicunque § [illegible] *l. de exh. lib.* [illegible] *C. de lib. præter.* novo enim jure non differunt hactenus feminæ, remotiores gradu patre, poſthumi & emancipati, a reliquis, *pr. de lib. & poſth.* [illegible] *C. de lib. præterit. N.* [illegible] Hi [illegible], ſi vel nominatim exheredantur, vel inſtituuntur, teſtamentum rite & valide factum eſt. Si vero cauſa [illegible] vel nulla vel [illegible] *querela* [illegible] inofficioſi teſt. *de qua ſupra.* In effectu [illegible] exheredationis [illegible] diverſitas: nam ſi ſui [illegible] exheredantur, teſtamentum eſt ipſo jure nullum [illegible] & [illegible] ſecus, ſi emancipati [illegible]. Si emancipatus non rite fuerit exheredatus, datur ei B. P. contra tab. § [illegible] *l. de exh. lib.* Qui paragraphus non reperitur mutatus. * Si mater filium, &c. *præterierit*, datur querela *inofficioſi* [illegible] *de qua ſupra.*

D * *VOLUNTARIA* inſtitutio fit libero teſtatoris arbitrio; & inſtitui poſſunt omnes niſi qui prohibentur [illegible] ut * in genere (1) *Servi pœnæ*, [illegible] *de her. quæ pro non ſcript.* [illegible] (2) *Peregrini* * & Deportati [illegible] Peregrini autem hodie non [illegible] Deportatis ſuccedunt hæredes [illegible] (3) [illegible] (4) Apoſtatæ [illegible] *C. de Apoſt.* [illegible] ſunt [illegible] Heretici, qui [illegible] Chriſtianam [illegible] & [illegible] irregulares, qui [illegible] (5) [illegible] (6) [illegible] (7) Monachi pauperes, ut Franciſcani &c. [illegible] *de V. S.* hos tamen hodie in Concil. Trident. [illegible] obtinere.

* a certis perſonis inſtitui non poſſunt, (1) Liberi naturales, a patre, ultra unciam, [illegible] *C. de nat. lib.* [illegible] vel matre; [illegible] Si vero nulli adſunt liberi legitimi aut parentes quibus [illegible] debetur, poſſunt [illegible] *Nov.* (2) *Inceſtuoſi* [illegible] *C. de inceſt. nupt.* (3) Principes [illegible] (4) Conjuges certo [illegible] *C. de ſecundis nupt.*

Hæc habilitas adeſſe debet tempore conditi teſtamenti, propter *regulam Catonianam* (33) *mortis,* (34) nam tum confirmatur, & adeundæ hereditatis, 49. §. 1. *de H. I.* §. 4. *I. de hered. qualit.* nam ſi incapax hujuſmodi inſtitutus eſt, revertitur hereditas *ad heredes ab inteſtato,* (35) *3. de his, quæ pro non ſcript.* 1. *C. de H. I.*

C Si * unus inſtitutus vel in parte hereditatis, vel in certa re, *totam* (36) hereditatem poteſt acquirere. §. 4. 5. *I. de H. I.* 1. 7. *de R. J. vid. Gudelin.* l. 3. c. 5. *Vinn. ad* §. 5. *I. h. Carpz.* 3. c. 2. d. 10. 1. §. 4. *h.* 41. *de vulg. & P. S.* niſi a milite ſit *inſtitutus:* (36) 6. *ff. de teſt. milit. vid. tamen* §. 5. *I. quib. mod. teſt.* 20. 71. *ad SC. Treb.* O

c. * *Plures inſtituunt,* (37) *vid.* §. 4. *I.* 71. *princ. de leg.* 1. 14. *de condit. teſt.* * *Uniformiter*

D (38) * Siquidem omnes ſimpliciter ſine partibus, tum inter omnes hereditas æqualiter

E dividitur, 9. §. *f. de leg.* 1. §. 6. *I. h.* 9. §. 12. *de H. I.* niſi conjuncti cum *disjunctis* (39) commixti ſint, e. g. T. & S. heredes ſunto, C. quoque heres eſto, hic enim T. & S. *unam mediam* (40) accipiunt, ac C. alteram mediam. *L.* 30. *pr. de leg.* 1. 59. §. 2. *de H. I.* De effectu particulæ *æque* (41) &c. *vid.* 13. *pr. de H. I. Carpz.* 3. c. 9. d. 13.

* Sin autem omnes ex certa * Re fuerint inſtituti, mentio rerum detrahitur, & e. hereditas æqualiter dividitur. Judex tamen ſive arbiter in fam. erciſc. judicio, cuilibet rem ſuam, tanquam prælegatam adjudicat, & reſiduum ex æquo dividit: 9. §. 13. *de H. I.* 35. *pr.* §. 1. 2. 3. *h.* Hinc etiam æs alienum æqualiter ſolvunt, licet in rebus quaſi *prælegatis* (42) maxima ſit diſparitas. 35. §. 1. F

* Portione, tum ſi partes aſſignatæ * æquant aſſem, f.

ſinguli ſuam habeant: * ſuperant aſ- G

ſem, ſingulis pro portione hereditaria detrahitur, aut hereditas ad dupondium, ſive g. XXIV. uncias deducitur, & pro port. hered. accreſcit. 13. §. 4. * non explent g. aſſem, ſingulis pro portione accreſcit. 13. §. 2. * *Difformiter,* d.

(43) tum ſunt alii * ex certis rebus, alii ex certis portionibus inſtituti; & qui rem habet ſimpliciter pro legatario eſt: hereditas tamen *ipſi accreſcit,* (44) ſi heredes eam nolint. 13. *C. de H. I.* * ex certis portionibus, alii ſimpliciter inſtituti. atque tum etiam, ſi portiones aſſem * ſuperant, res ad dupondium deducitur, & reliquum ſimpliciter inſtitutis *aſſignatur.* (45) H h. I

* æquant; recurritur ad dupondium, & XII. unciæ dantur, ſimpliciter inſtituto: 17. §. 4. *h.* §. 8. *I.* Si partes ſuperant dupondium, ad tripondium recurritur. 13. 17. *h.* §. 6. 7. 8. *I. de H. I.* L

Inſtitutio debet eſſe (1) *certa.* (36) 32. *vid. L. f. C. de H. I.* & *directa* (37) *Carpz.* 3. c. 9. d. 1. (2) non *captatoria,* (38) 70. 7. ſi nempe fiat verbis *præteriti temporis* (39) *d. d. LL.* (3) debet exprimere *certam heredis perſonam* (40) 9. §. 9. *vid.* 62. §. 1. Error nominis nihil impedit: 33. *de condit. & demonſtr.* 5. *C. de H. I.* 14. niſi perſonæ errorem quoque involvat: 5. 4. *C.* Poteſt etiam digito monſtrare *perſonam* (41) heredem 55 *pr. h.* 6. *ff. de R. C.* 9. §. 8. *h.* Si quis inſtituat cognatos ſuos, proximiores *excludunt* (42) remotiores, 64. §. 3. *de Leg.* 1. *Carpz.* 3. c. 9. d. 17. niſi adjecerit vt omnes: tum enim in capita *ſuccedunt.* (43) *Carpz.* 3. c. 9. d. 16.

## Notæ variorum.

Hereditas [illegible], [illegible]

(1) [*Directe*] [illegible] ſideicommiſſo, [illegible]

(2) [*Monſtrare*] [illegible] Inſtitutio [illegible]

[illegible]

[illegible] (3) [illegible] (4) [illegible]

[illegible] (5) [illegible]

[illegible]

[illegible] (1) [illegible] (2) [illegible]
[illegible] (3) [illegible] (4) [illegible]
[illegible] (5) [illegible] (6) [illegible] (7) [illegible]
(8) [illegible] (9) [illegible]
[illegible] (10) [illegible]
(11) [illegible] (12) [illegible]
[illegible] (13) [illegible] (14) [illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

Quod quidem ad [illegible] [illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

(39) [illegible]

(40) [illegible]

(41) [illegible]

(42) [illegible]

(43) [illegible]

TIT.

# TITVLVS III. IV.

## De injuſto, rupto, irrito facto teſtamento. Et de his, quæ in teſtamento delentur, inducuntur vel inſcribuntur.

A Teſtamentum eſt vel ab initio * NULLUM, [a] quia teſtator inhabilis, [illegible] *qui teſt. fac.* nec clauſula codicillaris hic juvat, [illegible] *de jur. codicill.* quia
B omiſſa ſolennitas. * intrinſeca, heredis inſtitutio vel exheredatio, [illegible] *de lib. & poſth.* [illegible] neque [illegible], [illegible] licet filius ante patrem moriatur. [illegible] *de lib. & poſth.* [illegible] Si tamen præteritus ſponte abſtineat a bonis paternis, ex æquitate ſuſtinetur, & datur inde B. P. *ſecundum Tabulas*, [illegible] tamen, nisi ſcripti ſint legitimi heredes, his enim datur B. P. unde cognati cum re.
b. [illegible] *ff. eod. lib. Bach. ad* [illegible] * extrinſeca, *vide ſupr. qui teſt. fac. poſſ.* Contra hoc competit querela nullitatis, quæ proponitur vel per modum actionis, vel exceptionis, [illegible] nec poteſt teſtator eam prohibere, [illegible] *de leg.* [illegible] *ff. de leg.* [illegible])
A * VALIDUM, [illegible] RUMPITUR, [illegible] ſc.
C quando ipſum jus vitiat teſtamentum: * (I) AGNATIONE *ſui heredis*, ſc. ſi poſt D
D Teſtamentum factum natus ſit ſuus heres, qui neque inſtitutus, neque exheredatus D
E [illegible] quod ſit *agnatum* [illegible] * Naturaliter, [illegible] ubi requiritur (1) ut natus ſit, [illegible] *C. de poſth. her.* [illegible] *Carpz.* [illegible] (2) ut vivus natus, [illegible] *C. de poſth. her. Carpz. d. l.* (licet ſit *imperfectus*, [illegible] *C. de poſth. her.* [illegible] *Giphan. ad* [illegible] *Perez. in C.* [illegible] *Carpz.* [illegible] *Septimeſtris*, [illegible] *d. l. l.* Octimeſtris, *Covarr. de part.* [illegible] *Perez. d. L.*, vel *ſupra* [illegible] (3) ut non ſit monſtroſus [illegible] *ff. C.* [illegible] *de ſtat. hom.* [illegible] (4) ut poſthumus teſtamento omiſſus ſit legitime *exheredatus*, [illegible] Rumpitur hoc modo teſtamentum [illegible] æquitate prætoria, ſi poſthumus vivente patre decedat.
c. [illegible] Agnatione [illegible] * Civili, (1) ſi mortuo patre nepos *ſui* [illegible] *de exhered.* (2) ſi naturales *legitimentur*, [illegible] (3) ſi filium *adoptet*, [illegible] *C. de adopt.* Ex teſtamento ſic rupto nec legata &c. *debentur*, [illegible] licet teſtator *ſciverit*, [illegible] uxorem eſſe prægnantem [illegible] (*Diſſ. Carl.* [illegible] *Carpz.* [illegible] *propter Nov.* [illegible]) Suſtinetur tamen propter clauſulam codicillarem in vim *fideicommiſſi* [illegible] ſi teſtator [illegible] * uxorem eſſe prægnantem. [illegible] *qui teſt. fac. ff. C. de codicill. arg.* [illegible] *de cond. & demonſtr.* [illegible] *Carl.* [illegible] *Bach.*
d. [illegible] * (II) MUTATIONE *voluntatis*, [illegible] *C. de teſt.* [illegible] *de adim. vel transf. leg.* [illegible] *de leg.* [illegible] (licet *juraverit* [illegible] quod ſe a ſententia nolle recedere [illegible] *de leg.* [illegible] (*Diſſ. Frank.* [illegible]) quæ locum habet etiam in teſtamentis conjugum *mutuis* [illegible] *Frank. d. l.* licet alter [illegible] jam ſit *mortuus* [illegible] *de adimend. leg.* [illegible] *C. de SS. Eccleſ. Frank. d. l.* [illegible] aut clauſula de non mutatione *abſque alterius voluntate*, [illegible] ſit adjecta. [illegible] *d. l. Berl.* [illegible] *Carpz.* [illegible] *Pak. de teſt. conjug.* [illegible] *de leg.* [illegible]) quæ DECLARATUR F
* verbis, modo tum etiam clare [illegible] *C. de teſtam.* [illegible] *Bach. de teſtam. ad d. L.* [illegible] *C. de teſt.* [illegible] *arg.* [illegible] *de teſt. mil.* [illegible] *Bach.* [illegible] (*obſ.* [illegible]) quod cum rete incipit ſtatum facto teſtamento. [illegible] *d. L.* [illegible] *Carpz.* [illegible] *Richt. de teſt. ad d. L.* [illegible] (*Diſſ. Cluſ.*)

In teſtamentis nuncupativis ſufficit revocatio verbalis [illegible] *de R. I.* DD. *ad* LL. quod hodie ad omnia extenditur, ſi revocentur coram VII teſtibus. [illegible]

F * Rebus vel factis [illegible] quod fit * Tabularum *corruptione*, [illegible]

C inductione, cancellatione, laceratione, & ſigillorum turbatione [illegible] *de teſt.* [illegible] *de his, quæ in teſt. del.* [illegible] *de teſt.* [illegible] (non autem rumpitur, propter ſolam repetitionem teſtamenti judicialis, a Judice, licet teſtator illud domi retineat, [illegible] niſi *aliunde* [illegible] de mutata voluntate conſtet.) Requiritur igitur, ut fiat deletio &c. (1) ab ipſo teſtatore, vel alio ejus nomine [illegible] *de teſt.* (2) *conſulto*, [illegible] ſecus eſt, ſi fortuito, [illegible] *de his, quæ in teſt. del.* in dubio, apud tertium repertum, *caſu* [illegible] inciſum videtur: apud teſtatorem vero, conſulto, niſi forte *metus alienum* [illegible] ſuſp. evenerit. [illegible] (3) per totum teſtamentum, [illegible] tamen [illegible] [illegible] reliquis non præjudicat: niſi ex circumſtantiis aliud appareat, [illegible] *de his, quæ in teſt.* [illegible] Rumpitur etiam teſtamentum *nuncupativum* [illegible] cancellatione inſtrumenti, ſuper eo confecti: licet notarius illud in protocollo non deleverit. Hæc hereditas igitur devenit ad heredes ab inteſtato. [illegible] *de his, quæ in teſt. del.*)

G * Teſtamento poſteriori confecto: licet in poſteriori prioris *nulla mentio* [illegible] facta, [illegible] *de teſt.* [illegible] quod etiam procedit, etiamſi in priori clauſula de non abrogando *ſit adjecta* [illegible] *de leg.* [illegible] *Carpz.* [illegible] (quo tamen caſu *hodie* [illegible] expreſſa prioris abrogatio requiritur. [illegible]) aut in *poſteriori* [illegible] heres ſub *conditione* [illegible] inſtitutus fuerit, [illegible] aut hereditatem non adierit: tum enim *utrumque valet.* [illegible] Modo poſterius *ſit perfectum*, [illegible] *de teſt.* [illegible] & ſolennitate, niſi poſterius ſit *privilegiatum*. [illegible] aut in eo heredes ab inteſtato *inſtituantur*: [illegible] tum V. teſtes *ſufficiunt*, [illegible] *C. de teſt.* E

Ex poſtfacto interdum prius ſuſtinetur tanquam fideicommiſſum, ſc. ſi in poſteriori teſtator dicat ſe velle, prius *etiam valere* [illegible] *ad SC Treb.* Interdum propter ſolam æquitatem rurſus convaleſcit, ut ſi teſtator poſterius cancellaverit, eo animo, ut prius valeret: tum enim datur B. P. *ſecundum tabb.* [illegible] *de B. P. ſecundum tab.*

G. * IRRITUM fit: * culpa perſonarum, ſi

H * heres ſcriptus non adeat hereditatem, quod in ſpecie dicitur teſtamentum deſtitutum. [illegible] *de hib. & poſth.* nam ab aditione omnia pendent, [illegible] *de teſt.* [illegible] quo non facto, nec legata debentur: niſi clauſula Codicillaris *adjecta* [illegible] *Carpz.* [illegible] quod nec jure novo *ſecus* eſt. [illegible]

I. * Si teſtator ſtatus mutationem paſſus, [illegible] *de* [illegible] eſt [illegible] (ſuſtinetur tamen ex æquitate teſtamentum ab hoſtibus *capti*, [illegible] propter fictionem J. poſtlim. vel L. Corneliæ, [illegible] *teſt.* [illegible] eſt [illegible] (quod hodie etiam fit *in banno* [illegible] ab Imperatore, & Camera: [illegible]) Reconvaleſcit tamen teſtamentum ita *irritum* [illegible] factum, ſi deportatus a principe reſtituatur [illegible] quod [illegible] etiam in banno obſervatur. [illegible] *de B. P.* [illegible]) Propter minimam capitis diminutionem irrita ſiunt.

K * arrogatione: [illegible] *quib. mod. teſt. infirm.* [illegible] tamen, ſubſecuta rurſus

quum-

## Nota variorum.

[illegible]

(3) [illegible]

(4) [illegible]

(5) [illegible]

(6) [illegible]

[illegible]

(10) [illegible]

(11) [illegible]

[illegible]

(12) [illegible]

(13) [illegible]

(14) [illegible]

(15) [illegible]

(16) [illegible]

(17) [illegible]

(18) [illegible]

(19) [illegible]

(20) [illegible]

(21) [illegible]

(22) [illegible]

(23) [illegible]



(24) [illegible]

[illegible]

[illegible]

(39) [illegible]

[illegible]

[illegible]

(45) [illegible]

(46) [illegible]

(47) [illegible]

(48) [illegible]

(49) [illegible]

(50) [illegible]

(51) [illegible]

(52) [illegible]

[illegible]

[illegible]

*non ſolvit; nonnunquam verò quando nulla aditio facta eſt.* Attamen, contrarium ex ſententia legis, quam affectus Legiſlatoris & caſuum ſimilitudo oſtendit, meritò aſſeritur. *Titius.*

(58) [*Revaleſcit*] Non *Jure Civili*, quia ſemel ruptum, ſed beneficio *Prætoris*, *Struv. Ex.* 32. *th.* 45. *Stryk.*]

(59) [*Declarationem*] Modo in pagani ordinaria teſtamentorum ſolemnia requirit adhibita. *Stryk.*

(60) [*In militia*] Quando miles ante militiam teſtamentum condidit, & illud poſtea ut militare valere velit, nova declaratione omnino opus eſt. Aliud verò eſt, ſi miles, qui militari jure teſtatus, emancipetur, ſic enim ſuſtinetur teſtamentum ſine nova declaratione. *Stryk.*

Ad teſtamentũ militis nova declaratione quando opus?

# TITVLVS IV.

## De his quæ in teſtamento delentur.

De hoc actum ad tit. præcedentem.

# TITULUS V.

## De heredibus inſtitutis.

De hoc titulo actum ad tit. 2. hujus libri.

# TITULUS VI.

## De vulgari & pupillari ſubſtitutione.

*Junge L. 6. C. tit. 25. & 56.*

D Subſtitutio proprie eſt, ſecunda heredis inſtitutio directa, in locum deficientis facta. *L. 2. §. 6. h. 43. §. 2. v. 28. de H. I.* Eſt vel *fideicommiſſaria*, (1) *de qua lib. 36. tit. 1.* *vel directa* (2) ſive civilis, quæ proprie ſubſtitutio vocatur. *7. 15. h. 5. 7. C. de impub. & ſubſt. vid. Gothofr. in not. ad d. L. 7.* Hæc dividitur, *1. §. 1.* in

* ſimplicem, quæ fit in caſum deficientis heredis, & dicitur vulgaris: vel A
ſi heres erit, & poſt *deceſſerit:* (3) Quæ iterum eſt * vel reſtricta, ad ætatem pupillarem, & dicitur pupillaris: vel ad certum aliquem ſtatum, propter quem quis non B
poteſt teſtari, & dicitur quaſi pupillaris, ſive exemplaris.

* vel libera, ſive abſoluta, & di- b.
citur militaris, ſive privilegiaria: quæ fit ſine *ulla reſtrictione:* (4) in

* duplicem ſive mixtam, quæ fit in utrumque caſum: ſc. ſi heres non erit, a.
*vel erit*, (5) &c. quod fit tacite vel expreſſe &c.

D *VULGARIS* ſubſtitutio eſt, quæ fit a quocunque teſtatore cuivis heredi, cum in caſum, ſi heres non erit: Eſtque vel Expreſſa vel Tacita, quæ continetur *ſub expreſſa* (6) pupillari. *4.* Fit voluntate teſtatoris, in *teſtamento declarata:* (7) *§. p. I. de* C
*Codicill. 36. h.* Subſtitutio tamen in codicillis facta ſuſtinetur in vim *fideicommiſſi.* (8) *76. ad SCt. Trebell. 127. de legat. 1.*

*Subſtituunt*, (9) qui teſtamenta faciunt: *Eos*, (10) qui heredes eſſe poſſunt; ſub- S
ſtitutio coheredum dicitur reciproca ſive mutua. *4. §. 1. h. 64. de leg. 2.* Subſtitutus P
ſubſtituto, eſt etiam ſubſtitutus *inſtituto*, (11) *27. 41. obſt. 47.* (12)

Here-

Hereditas. Si ſinguli ſingulis ſubſtituti, centetur in ſubſtitutione *partes repetere*, quæ fuerant in inſtitutione. §. [illegible] *In caſum, ſi noluerit* (quod ſignificat in extraneo, qui ſui juris, ſi ipſe heres non erit, nec *fiat moritur*, alium *fecerit heredem*, [illegible] heres non erit, ſc. ex teſtamento, [illegible] C. *de impub. ſubſt.* [illegible] itaque quia non poteſt, aut quia non vult: [illegible] caſus impotentiæ caſum voluntatis regulariter *non includit*. [illegible] (*[illegible]* [illegible] *de lib. & poſth.*)

Extinguitur ſubſtitutio, ſi extraneus hereditatem *adierit*, [illegible] C. vel ex L. Theodoſiani *in caſu*. [illegible] *L. un. C. de his, qui ante apert. tab.* vel ſi ſuus ſi heres [illegible] immiſcuit, aut antequam abſtineat, *deceſſerit*. [illegible] *L. un. §. 13. C. de cadoc. toll.*

*PUPILLARIS* ſubſtitutio eſt, quæ fit a parentibus, liberis impuberibus, in patria poteſtate exiſtentibus, & in alterius poteſtatem non recaſuris, in eum caſum, ſi heredes erunt, & impuberes deceſſerint. Eſt expreſſa vel tacita: nam expreſſæ vulgari ineſt tacita pupillaris, niſi contraria teſtatoris voluntas appareat. [illegible]

*Morbus introducta* [illegible] Voluntas patris, ſive etiam facientis teſtamentum, [illegible] (*avi, proavi*, [illegible]) paterni, qui liberos habet in poteſtate. [illegible] *de adopt.* [illegible] Non etiam pater emancipator, adoptans extraneum; mater, (*[illegible]*) [illegible] etiam hodie [illegible] Suſtinetur tamen matris ſubſtitutio pupillaris propter clauſulam codicillarem, *in vim fideicommiſſi*. [illegible] *ad SC. Trebell.* [illegible])

* (1) Liberis, primi aut ulterioris gradus, maſculis vel fœminis, §. [illegible]

* (2) Impuberibus: [illegible] nam puberibus facta, neque in vim fideicommiſſi valet, niſi propter clauſulam codicillarem [illegible] *de SC. Trebell.* [illegible]

* (3) In patria poteſtate conſtitutis, [illegible] arrogato tamen tantum, ſubſiſtit in bona, quæ *occaſione* arrogatoris accepit:

* (4) In alterius poteſtatem non recaſuris.

*Fit enim in caſum*, ſi heres erit, & intra pubertatem deceſſerit: Hinc ſubſtitutio exheredato facta, *proprie pupillaris* non eſt. §. [illegible]

Exiſtente conditione ſubſtitutus conſequitur bona patris & filii, [illegible] & utriuſque creditoribus ſatisfacere debet, nam unam hereditatem abſque altera adire non poteſt [illegible] neq; enim conceditur querela inofficioſi [illegible] *de inoff. teſt.* [illegible] *impub. ſubſt.* (nam pater *fecit* filio teſtamentum) neque conditio ex L. (*[illegible]*) [illegible] Licet ſubſtitutio *tacita ſit pupillaris* [illegible] de hoc tamen caſu in praxi *aliud obſervatur*, [illegible]

Extinguitur hæc (1) *Pubertate*, [illegible] & elapſo eo tempore, in quem eſt ſubſtitutum e. g. XLVII annum [illegible] quod tempus non de momento in momentum computatur: [illegible] (2) Infirmato teſtamento patris, [illegible] *de inoff. teſt.* Hodie hoc (ex [illegible] diſpoſitum) *mutatum* [illegible] (3) Mortuo filio ante patrem: hoc tamen in caſu conſequitur ſubſtitutus hereditatem *ut tacite vulga-*

*vulgaris* [37] (4) Si filius exierit e patria *poteſtate*, [38] *arg. 40. de H. I. 41. §. 2. h.* (5) Mortuo ante inſtitutum *ſubſtituto*, [40] &c. *plura vide apud Hunn. in Encycl. Jur. p. 3. & 4. tit. 13. c. 11.*

C *EXEMPLARIS* ſeu quaſi pupillaris fit autore Juſtiniano, *9. C. h. §. 1. I. h. vid. 43. h.* *a parentibus*, [42] (h. e omnibus aſcendentibus, cujuſcunque gradus aut ſexus: *9. C. in med. verſ. ſi filia &c.* licet mater *ad ſecunda vota* [43] tranſierit. *propter generalitatem d. L. 9. §. Carpz. 3. c. 8. d. 13. Def. Ludov. propter L. 22. §. ſ. C. de adm. & peric. tut.*) Si uterque & pater & mater ſubſtituerint, in paternis bonis præfertur ſubſtitutus paternus, in maternis maternus, in communibus *æqualiter* [43] admittuntur. [illegible] *Trentac. h. p. 3. c. 3. n. 10.* teſtantibus (non etiam aliter voluntatem ſuam declarantibus.)

P Liberis legitimis. *10. §. 1.* mater etiam *naturalibus*, [44] *29. de inoff. teſt.* (non etiam ex *damnato coitu natis.* [45] *N. 89. c. ſ. N. 74. c. ſ.*) cujuſcunque ſexus aut gradus, *§. 1. I.* (etiam *impuberibus*, [46] *§. 1. I. h. 9. C. h. Carp. 3. c. 8. d. 13. Bach. V. 2, D. 11. th. 10. lit. B.* & recaſuris in aliam poteſtatem. *Struv. h. th. 36.*) qui verſantur in eo ſtatu, in quo non poſſunt teſtari. (ut furioſis, *prodigus*, [47] &c. *vid. ſup. ad tit. qui teſt. fac. S.* & hic *unus caſus* [48] expreſſus, continet alios tacite. *Struv. h. th. 33. in f.*) quique a parentibus ſunt heredes inſtituti: *N. 115. c. 3. L. 9. C.* interdum etiam *juſte exheredati;* [49] *arg. §. 2. I. h. Struv. h. th. 36.*

ſr. *In caſum*, [50] ſi heredes erunt, & in eodem ſtatu deceſſerint. Ita ut ſubſtituantur liberi eorum aut fratres & ſorores, *35. pr. de poll. 93. §. 3. de Leg. 3.* *aut parentes;* [51] His deficientibus poteſt teſtator ſubſtituere, quem velit, etiam mater *vitricum.* [52] *Carp. 3. c. 8. d. 4.*

Ɔ Extinguitur (1) Si liberi parentibus heredes *non extiterint*, [53] hæc tamen expreſſa continet etiam tacite vulgarem: *arg. 4. h.* (2) Infirmato patris teſtamento: *§. 5. I.* (3) Si poſt ſubſtitutionem filio furioſo *naſcatur filius:* [54] *43. h.* (4) Reconvaleſcentia: *43.* modo ſic maneat *ad mortem uſque* [55] teſtatoris, *41. §. 1. de H. I. 9. 4. I. de hered. qualit.*

C *MILITARIS* ſive *compendioſa* [56] ſive privilegiata fit permiſſu Imperatoris, *15. h. vid. 8 C. h.* à milite, licet ſibi teſtamentum non faciat, aut *extra teſtamentum* [57]

P ſubſtituat: *2. §. 1. h. 15. §. 5. 41. in f. de teſt. milit.* Liberis, *etiam puberibus.* [58] *8. C. h.*

ſr. & omni heredi. *Struv. h. th. 38.* In caſum, quo utcunque defecerit heres. *8 C. h.*

E Reliquas ſubſtitutiones omnes continet, *8. C. h.* ſcil. ſi ſubſtitutus probet teſtatorem etiam de hoc caſu *ſenſiſſe*, [59] *8. C. de teſt. milit.*

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## *Notæ variorum.*

*Subſtitutio eſt vel obliqua ſeu fideicommiſſaria, vel directa ſeu ſtricte ſic dicta.*

(1) [*Fideicommiſſaria*] Sive obliqua, quæ ſubſtituto hereditatem vel eius partem tribuere mediante facto eius, qui eam reſtituere rogatus eſt. [illegible] *pupill. ſubſtit.* tales *ſubſtitutiones confirmari ſolent in Codicillis*, cum teſtamentum clauſula codicillari muniatur, *l. 76. ff. ad SCt. Trebell. Carpz. p. 3. c. 8. d. 28.* tunc quoties *verba teſtamenti ad fideicommiſſum trahi queunt*, ut valeant reſtitutione [illegible]. *a l. 67. § 10. ff. de leg. 2. Carpz. d. c. d. 25. Menoch.* Differunt hæ duæ ſubſtitutionum ſpecies (1) *ratione aſſium ſubſtituendi.* Vulgariter quilibet ſubſtituere poteſt, qui teſtamentum condit; ſed pupillariter nonniſi pater, qui liberum in ſua poteſtate adhuc habet. (2) *ratione liberorum, qui ſubſtituuntur.* Vulgariter ſic heredi [illegible] que, ſed pupillariter nonniſi liberis impuberibus in patria poteſtate adhuc conſtitutis. (3) *ratione cauſæ ad quam ſubſtituuntur.* Vulgaris ſtatim expirat, ſi heres inſtitutus hereditatem adiit, tunc enim heredes ab inteſtato plane ſunt excluſi, & ſic teſtator ſcopum ſuum aſſecutus eſt. At pupillaris durat uſque ad 14. annum, quamvis filius heres inſtitutus hereditatem revera adierit, deinde tamen intra pubertatem deceſſerit. vid. *§. 8. & 9. I. de pupill. ſubſtit. Lud. h. d. 2.*

*Subſtitutio eſt vel vulgaris, vel pupillaris.*

(2) [*Vel directa*] Sive *ſtricte ſic dicta. a. L. 76. ff. I.*

[illegible]

(3 [illegible]

(4 [illegible]

(5 [illegible]

(6 [illegible]

(7 [illegible]

(8 [illegible]

(9 [illegible]

(10 [illegible]

(11 [illegible]

(12 [illegible]

(13 [illegible]

(14 [illegible]

(15 [illegible]

(16 [illegible]

(17 [illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

Dddd ddd 3 [illegible]

ſit, ex ratione, quod ſenatus tacitum parentum reſtat. Sed ſi forte & volunt teſtari, heredibusque legitimis hereditatem auferre, ſed per recidivam impeditum. Æquum ergo eſt, pro ſubſtitutione pronunciare *Struv.*

Subſtitutio quare dicatur breviloqua.

(58) [... ] Dicitur etiam *breviloqua*, quia quibuscunque verbis ... ſive filius impubes ſive pubes moriatur, ſive hic ei eſſe nolit, continet quaſi in compendio. *Struv.* e. g. Hæc eſt ſubſtitutio militis: *Quandocunque filius meus moriatur, eundem ſubſtituo Cajum. Mencke.*

Subſtitutio militaris & vulgaris.

In *militari* non opus eſt, ut miles ſibi ipſi teſtamentum faciat, ſed ſubſtitutio abſque inſtitutione ſubſiſtit, quod in reliquis, imo in ipſa pupillari ſubſtitutione ſecus eſt. *l.* 2 § 1 *ff h. t.* Secundo, miles omni heredi in caſum, quo utcunque defecerit, etiam libero etiam puberibus, quamdiu hoc ipſi placet, ſubſtituere poteſt. *l.* 5 *de impub. & al. ſubſt.* Sed ſubſtitutio vulgaris tamquam ſaltem valet, *donec adita fuerit hereditas*, & pupillaris, *donec filius impubes pubertatem attigerit*, v. *Lauterb. ad h. t. in f.* Et hinc eſſe puto, quod DD. communiter hanc ſubſtitutionem ſpeciem *breviloquam* appellare conſueverunt, vid. *Struv. h. Ex.* 33 *th.* 38 *Lud. diſſ.* ]

Sola voluntas milit. ſ. pro lege eſt.

(57) [*Extra teſtamentum*] Sola enim voluntas militis pro lege eſt, quod tamen intelligo, modo in *expeditione* ſubſtituat. Alias enim tenetur juxta communia teſtan. & ſic etiam ſubſtituere. *Struv.*

Subſtitutio miles filio puberi.

(58) [... ] Hoc tamen caſu ſubſtitutus illa tantum capit bona, quæ ſi ius a patre accepit. quod ſi verò impuberi ſubſtituerit miles, & ille intra pubertatem decedat, ſubſtitutus ſuccedit in filii bona undecunque illa provenient. *l.* 8. *C. h. Struv.*

Subſtitutiones omnes hodie ſunt in uſu.

(59) [*Struviſſe*] Ergo hoc in dubio quo ad *militem* præſumendum puto, niſi contrarium appareat. *Struv.* *Hodie in noſtro Imperio omnes ſemper ex ſubſtitutionum ſpecies maxime in Romano ſuum proſtant uſum*, [illegible] ex adductis à *Carpz.* locis apparet. *Schilter ad ff. Ex.* 38 § 93. Imo, ne quidem *Groenew.* deſuetudinem in Belgio aſſerenti ad *l.* 1 *de vulg. ſubſt. et. de pup. ſubſt.* ſuffragantur *Vinn. ad* § *ſ. J. de pupill. ſubſt. Huber in præl. ad ff. h. poſ.* 15 *Mencke.*

# TITVLVS VII.

## De conditione inſtitut.

### *Junge L. 6. C. tit. 25.*

De conditione, dies &c. *vid. ſup. tit. de poſt.* Extraneo poteſt adjici *omnis* [1] conditio, & caſualis poteſt ſemper impleri, poteſtativa vero *poſt mortem teſtatoris* [2] *5. 10. 12. 21. h.* Suus autem heres, & quidem filiusfamilias, non poteſt ſub alia, *quam poteſtativa* [3] inſtitui: *4. 86. de H. I. 15. 21.* quæ ipſa detrahitur, ſi *noceat* [4] legitimæ: *32 36. C. de inoff. teſt.* (aliæ conditiones vitiant inſtitutionem ipſo jure, *5. de H. I. ſ. h. 4. C. de inſtit. & ſubſt.*) niſi filiusfamil. ſub contraria conditione fuerit *exheredatus*: [5] *4. C. de inſt. & ſubſt. 86. de her. inſt.* Quod etiam hodie obtinet, (*Obſ. 32.* [6] *C. de inoff. teſt.*) *ſine diſtinctione*, [7] an ſint ſui, an emancipati, maſculi an fœminæ, filii an ulterioris gradus, *4. C. de prat. lib.* quod olim ſecus erat. *vid. ſupr. de lib. & poſth.* Impoſſibilis natura & *jure*, [8] *detrahitur*, [9] *1. 6. 14. 15.* licet *per accidens* [10] tantum talis ſit, *6.* Vitiatur autem ipſa inſtitutio propter *perplexitatem*, [11] *16. h.* & ſi aliæ præter poteſtativam adjectæ filio, *ut ſupr. h.* DIES etiam poteſt adjici inſtitutioni, *§. 9 I. de H. I. modo non ſit certus*, [12] (nam nemo poteſt etiam *ratione temporis* [13] teſtatus & inteſtatus decedere, *7. de R. I. 88. de H. I. Struv. h. th. 41.* Excipe teſtamentum militis: *15. 41.*) *ſed incertus* [14] an exiturus ſit: *21. quando dies legat.* cujusmodi etiam eſt e. g. Titius heres eſto, *cum Cajus morietur*, [15] (ſc. quoad ultimas *voluntates*,) [16] *1. §. 2. de cond. & demonſtr. 75. eodem, vid. infr. ad tit. de condit. & demonſtr.*

*ſilius*

## Notæ Variorum.

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

(12) [illegible]

[illegible]

(13) [Ratione temporis] [illegible]

[illegible]

(14) [illegible]

(15) [Cum Cajus morietur] [illegible]

(16) [illegible]

# TITULUS VIII.

## De jure deliberandi.

*Junge l. 6. C. t. 30.*

D *Jus deliberandi* (1) eſt facultas heredi conceſſa, ut intra *certum tempus* (2) in vires hereditatis inquirat, & deliberet, an hereditatem habere, an vero [illegible] repudiare (3) velit.

C Concedit Princeps vel magiſtratus, *L. ult. §. 13. C. h. t.* *Heredibus* (4) extraneis, & de jure prætorio (ſecundum quod abſtinere poſſunt) *ſuis*, (5) [illegible] *§. 1. & 10. C.* & horum heredum heredibus, ſuis & extraneis, ſc. intra annum à tempore primæ ſcientiæ *primi heredis*, (6) *19. C. h. t.* Ob-

Objectum eſt hereditas, in extraneo acquirenda, in ſuis acquiſita; Non autem in quam quis ſe *immiſcuit*, [7] *4. C. de repud. hered.* niſi ſit impubes, *57. pr. de O. v. A. H.* aut *minor* [8] *57. §. 1. L. 7. §. 5. de min.* Spatium olim erat arbitrarium, *1. §. 1. h.* Hodie princeps concedit *annum* [9] *Magiſtratus IX menſes*, [10] *22. §. 13. C.* Quamdiu nemo urget, poteſt *ſemper* [11] deliberare: Si verò intra hoc ſpatium voluntatem non declaraverit, tum creditoribus urgentibus habetur, ac ſi *adiiſſet*, [12] *f. §. 14. C.* Subſtituto autem petente hereditatem, habetur, ac ſi repudiaſſet, *69. de A. v. O. H.* Concedenda ſunt deliberanti *inſtrumenta*, [13] *5.* qui prævia cauſæ cognitione facit omnia, quæ neceſſitas *poſtulat*, [14] *5. §. 1. L. 6. h.*

# Beneficium inventarii.

Hoc inventarium eſt omnium rerum hereditariarum ab herede legitime confecta deſignatio, heredem ab omni onere hereditario liberans.

Introductum à Juſtiniano: *§ 5. I. de hered. qual. & diff. L. f. C. de jur. delib.* Fit *voluntate* [15] heredis: *f. § 14. C* (In quibusdam locis *neceſſarium eſt*, [16] *[illegible] ad Nov. p. 6. c. 8. n. 28.* tam ſuis, quam extraneis, *f. §. 12. C. h.*) per notarium, *f. § 2. C. h.*

Conſignentur *omnes res* [17] *f. §. 2. C.* Si præſumatur non omnia eſſe inſerta, defertur heredi juramentum *purgatorium*, [18] *Ca. 3. c. 33. d. 11.* qui omiſſa * *fraude* [19] duplicata reſtituat, *f. §. 10.* hodiè extra ordinem puniendus, *[illegible] p. 2. dec. 39. n. 18.* * Bona fide, ſimpliciter adſcribit, *d. L.*

Debet autem hoc inventarium (1) *Incheari* [20] intra primum menſem, & intra alios duos perfici, qui currunt à tempore ſcientiæ, quo teſtator mortuus ſit, *f. §. 2. C. h. Ca. 3. c. 33 d. 13.* Si tamen res remotioribus locis ſitæ ſunt, annus conceditur, *d. L. f. §. 3. C. h.* qui currit à tempore mortis: *Ludw. ad §. 6. I. d. H. Q. & D.* interdum etiam à judice dilatatur. (2) Fieri in præſentia *legatariorum*, [21] &c. qui *citantur* [22] per Edictalem, vel privatam, quod ſi non veniant, tres teſtes adhibendi. *N. 1. c. 1. & 2. §. 1.* (3) *Subſcribi* [23] ab herede: hic ſi ſcribere neſciat, notarius ſcribat, præfixo ſigno †. ab ipſo herede. *f. §. 2. C.* quod ſignum hodie in deſuetudinem abiit.

* Inventarium *CONFICIENS* intra ſuum tempus non debet inquietari à creditoribus hereditariis: *f. §. 11. C. h.* *alias* [24] heres ſtatim *poſt IX dies* [25] poteſt conveniri, *N. 115. c. 5. vid. Ca. 3. c. 14. d. 15. 16.*

* Inventario *CONFECTO* (1) Heres *ultra vires* [26] hereditatis non obligatur: *f. §. 13. 14. C. N. 1. c. 2. §. 1.* conventus opponit exceptionem inventarii: *f. §. 4. C.* inde res *perit creditoribus*, [27] *f. §. 4. C.* (2) Poteſt creditoribus res hereditarias in ſolutum dare, ſi hereditas non ſit ſolvendo, *f. §. 4. C.* neque neceſſariò inquirit, quis ex creditoribus *potius Jus* [28] habeat: (3) Actiones inter defunctum & heredem *ſalvæ* [29] manent: (4) Expenſas in hereditatem factas, deducit: (5) deducit Trebellianicam.

* Si verò inventarium non fecerit, etiam *hodie*, [30] *in ſolidum* [31] obligatur. *f. §. 14. C. h. N. 1. c. 2. Vid. Ca. 3. c. 33. d. 15. Berl. p. 1. concl. 48. n. 20.*

*Notæ variorum.*

(1) [*Jus deliberandi*] Veteres *Croatæ*, *art. 27.* [illegible] ... ut ſi quis adiiſſet hereditatem, Creditoribus in ſolidum obligaretur, quod alias ...
*Apud Romanos* [illegible] ...

[illegible]

(2) [illegible]

(3) [illegible]

(4) [illegible]

(5) [illegible]

(6) [illegible]

(7) [illegible]

(8) [illegible]

(9) [illegible]

(10) [illegible]

(11) [illegible]

(12) [illegible]

(13) [illegible]

(14) [illegible]

BENEFICIUM INVENTARII

(15) [illegible]

(16) [illegible]

(17) [illegible]

(18) [illegible]

[illegible] Burg.

(19) [*Pruenis*] [illegible] Burg.

(20) [illegible] Tempus [illegible] Burg.

(21) [illegible] Cardinalem [illegible]

(22) [*Consensus*] Quod [illegible] Burg.

(23) [illegible] Has [illegible] Voluit [illegible]

(24) [illegible] Burg.

(25) [illegible] Burg.

(26) [illegible] Burg.

(27) [illegible] Burg.

(28) [illegible] Burg.

(29) [illegible] Burg.

(30) [illegible]

[illegible] ab onere ſolvendi ultra vires hæreditatis adhuc hodie ſolenne inventarium requirerent, *Mev. p. 2. d. 96 & p. 6. d. 365 [illegible]* De jure quidem Romano ad conſectionem inventarii plurima [illegible] *l. ſ. C. de jur. delib.* v. g. ut incheretur illa intra primum menſem & [illegible] perficiatur, aut quoad res in remotioribus locis ſitæ, intra annum: ut fiat in præſentia Legatariorum per Edictum vocatorum: ut ſubſcribatur Inventarium confectum ab herede, vel ſi hic ſcribere neſciat, a Notario, præfixo ſigno crucis, & quæ ſunt ſimilia. Verum [illegible] Mevius *P. 2. dec. 356.* [illegible] in Provinciis noſtris ceſſare, [illegible] *[illegible]* & *juratam ſpecificationem*, quod [illegible] Notario adhibitis duobus teſtibus conſcipiatur & in Inſtrumentum publicum redigatur, [illegible] regulariter etiam obſignatio bonorum in ipſo momento mortis defuncti præmittenda eſt, ut [illegible] ſubtractionem bonorum excludatur. *[illegible]* autem privatum fiat ab ipſo herede, quæ [illegible] quoque per juramentum ſemper confirmari debet, cum tamen heres ad [illegible] ſuper legitimo Inventario juramentum regulariter adigi nequeat, niſi [illegible] inventario [illegible]. *Mev. p. 4. dec. 92. [illegible]* [illegible] *ſol. 3. cap. 5 § 3.* Sed an jurata ſpecificatio eundem effectum producat, qui Inventario adſcribitur, [illegible] eſt quæſtio. In Saxonia hæc quæſtio ſine dubio affirmanda, quippe in qua heres, licet inventarium non conficeret, tamen ultra vires hæreditarias non tenetur, [illegible] *l. 3. art. 6. [illegible] Dec. 60.* [illegible] *b. [illegible] 33. th. 57 Carpz. p. 3. c. 33. d. 18.* Sed extra Saxoniam hoc univerſaliter adſerere non [illegible]. Mevius enim *p. 2. dec. 96* [illegible] ſpecificationi non eum tribuit effectum, ut quis ultra vires hæreditarias [illegible], *ſed* [illegible] in [illegible] bonorum [illegible] poſſit. [illegible] hic ad mores [illegible] reſpiciendum, & [illegible] ſine dubio agit, qui inventarium coram Notario & teſtibus confici curat. *Lud. h. diſſ. 2.*

(51) [*[illegible]*] [illegible] eſt in filio & milite, [illegible] [illegible] exceptionem [illegible], ſi Inventarium confecturus non fuiſſe [illegible] hereditatem, quamvis in [illegible] hæc [illegible] exceptio non ſit admittenda. *[illegible]* Inventarium [illegible] juratam ſpecificationem, quæ eſt rerum, de quibus confectum non eſt inventarium, deſignatio juramento confirmata, hinc apud [illegible] vice inventarii eſt, *arg. § [illegible]. l. 2. a 6. Dec. [illegible] 57. 21* Formula juramenti apud *[illegible] ad Dec. [illegible] 57 obſ. 2. n. 16. [illegible]* In ſoro Saxonico & ferè etiam alibi, regulis illis juris civilis interpretatio ceſſat, hinc heres ſine deliberatione & inventario adiens, ultra vires hæreditatis tamen non tenetur, modo *juratam ſpecificationem* edat, ad quam ſibi invicem etiam fratres & ſorores tenentur. *Dec. [illegible] 56.* [illegible] autem tria conſequi arbitrantur, (1) quod hodie jus deliberandi ceſſet, adeo ut heres ad id non ſit admittendus, cui bono enim tantas moras, qui ſine periculo ſtatim adire poteſt? Hæc obſtat *Dec. [illegible] 57.* Nam jus deliberandi, de quo hic ſermo, non pertinet ad hereditatem *adeundam*, ſed *adeuntem repudiandam*, (2) quod inventarium ſub forma juris civilis non amplius occurrat, ſed juxta *Jus Germanicum* ſaltem, ut rerum deſignatio ſpecifica? Hinc etiam modus illud conficiendi, jure civili præſcriptus, hodie ferè negligitur, (3) quod quis adeuntem hereditatem iterum repudiare queat, & licet illa facultas *d. Dec. 57.* ad annum reſtringatur, non videtur tamen magnum illum in eſſe effectum, cum etiam poſt annum, ultra vires hereditatis, propria voluntate haud [illegible], heres non [illegible]. *Thom.*

# LIBER XXIX.

## *TITULUS I.*

## De teſtamento militis.

*Jung. l. 6. C. t. 21.*

DCR Teſtamentum militis eſt, quod a milite in expeditione conſtituto, ſine omni *ſolemnitate* (1) factum.

Conſtitutionibus Impp. introductum: *i. pr. h.* (1) Requiritur Miles, ſeu perſona, ab eo, qui jus belligerandi habet, ad juſtum bellum lecta, in-

[illegible]

numerum *videre*, [illegible] & ſacramento *obſtricti*. [illegible] *excepto eſt* [illegible] in *L. un. §. ſ. C. de B. P. ex teſt. milit.* Non etiam *milites vagi*, [illegible] der Frey Beuter [illegible] *de anno 1532.* [illegible] von den Landsknechten. Nec illi, qui facti teſtamenti tempore, non fuere milites, [illegible] nec milites facti hanc voluntatem approbent, [illegible] nec omnes, in quorum provincia bellum geritur: *Carpz.* [illegible] Ex æquitate tamen ſic teſtantur *in hoſtico deprehenſi*, [illegible] & bellici conſiliarii, medici, clerici mercatores, Marketenter (2) In expeditione conſtitutus, [illegible] C. non etiam *in hybernis*, [illegible] *Carpz.* [illegible] *de anno 1528.* [illegible] von den Notarien. §. ferner ſollen auch. nec milites Limitanei, Stationarii, [illegible] *de off. præfect.* [illegible] *de B. P.* [illegible] Præſidiarii, *Gail.* [illegible] *Carpz.* [illegible] niſi hic hoſtium incurſionibus obnoxii. [illegible]

(3) Qui habet *teſtamenti factionem* [illegible] *C. de inoff. teſt.* [illegible] *quibus non eſt permiſſ.* [illegible] *qui teſt. fac.* [illegible] Singulare enim eſt, quod *poſſit teſtari*. [illegible] (α) miles ad mortem damnatus, modo ſententia condemnatoria hoc permiſſum, [illegible] *de donat.* [illegible] & condemnatus ſit ex delicto militari, (non communi) [illegible] quod ſidem ſacramenti *non rumpit* [illegible] *de bonis caſtrenſibus* [illegible] (β) mutus & *ſurdus* [illegible] ſine ſpeciali conceſſione, [illegible]

Heredis inſtitutio hic fieri poteſt ſine omni ſolemnitate, [illegible] modo de voluntate conſtet, [illegible] ex quibuscunque *ſcripturis*, [illegible] aut nuncupatione, quæ probatur duobus teſtibus, [illegible] etiam *non rogatis* [illegible] Et miles teſtator poteſt inſtituere alias incapacem, ut deportatum, peregrinum, [illegible] (niſi quos Lex ſpecialiter prohibuerit, ut ſervum pœnæ, [illegible] meretricem, in quam cadit turpis ſuſpicio, [illegible] concubinam [illegible] Sufficit heredem eſſe capacem tempore mortis, licet tempore conditi teſtamenti fuerit incapax [illegible] Inſtituere heredem ex certo tempore, & ad certum tempus, [illegible] ſibi non ſi [illegible] ſilio facere teſtamentum, [illegible] etiam extraneo pro lubitu [illegible] (Captatoria tamen inſtitutio locum *non habet*, [illegible]) Liberos *præterire*, [illegible] (nec poſthumus rumpit) *modo ſciat* [illegible] uxorem eſſe prægnantem. [illegible]

Teſtatur de omnibus bonis & parte eorum, pro lubitu, [illegible]

Valet ut ſolenne, poſt miſſionem tamen intra annum [illegible] modo fecerit *verus miles*, [illegible] *L. un. pr. de B. P. ex teſt. mil.* & ex cauſa non ignominioſa miſſus ſit, [illegible] *de re milit.* [illegible]

Infirmatur (1) nuda contraria voluntate [illegible] (2) nihil etiam per teſtamentum poſterius, [illegible] ſi expreſſe dixerit, ſe velle cum *utroque* [illegible] decedere, [illegible] (3) neque agnatione ſui heredis. [illegible] (4) Falcidia in eo non habet locum [illegible] *ad L. Falc.* [illegible] *ad SC. Trebell.* (5) non poteſt impugnari querela *inofficioſi* [illegible] *C. de inoff. T.* (6) nec locum habet jus accreſcendi, & pars deficiens defertur heredibus ab inteſtato [illegible] hoc tamen hodie [illegible] mutatum. *Conſt.* [illegible] *de anno 1512* von Notarien. [illegible] von den Teſtamenten.

Teſtamentum *PATERNUM*, eſt teſtamentum minus ſolenne, a parentibus inter liberos factum. Scriptum & nuncupativum.

Introductum conſtitutionibus *Imperatoriis* [illegible] *C. famil. erc.* [illegible] *C. qui teſt. fac.* [illegible] Fit voluntate parentum, (h. e. omnium aſcendentium, cujuncun-

que

quo gradus aut ſexus. *51. de V. S.* [illegible] *de in jus voc.* [illegible] *C. de teſt. N.* [illegible] *in præfat. Carpzov.* [illegible]) qui habent teſtamenti factionem, hic enim adeo [illegible] [illegible] Etiam mater, quæ ad *ſecunda vota* [illegible] tranſiit, *arg.* [illegible] *de publ.* [illegible], aut quæ nobilis eſt & inter ſpurios, quos *ſolos habet*, [illegible] ita teſtatur, *Gail.* [illegible] *obſ.* [illegible] (*obſ.* [illegible] *C. ad SCt. Orfit.*)

S *Inter ſolos liberos*, [illegible] *C. de teſtam.* [illegible] *C. fam. erciſc. N.* [illegible] *in præf.* [illegible] h. e. deſcendentes, omnis gradus & ſexus, [illegible] *de V. S.* etiam poſthumos, [illegible] *de ſtat. hom.* & nepotes, licet filius adhuc vivat: [illegible] *C. de teſtam.* [illegible] (*obſ.* [illegible] *C.* [illegible] *fam. erc.* [illegible] *ad* [illegible] *de teſtam.* [illegible]) modò ſint naturales, (nam quoad *adoptivos* [illegible] non valet. [illegible] *de jure* [illegible] *in jus voc.* [illegible] *C. de his* [illegible]) vel ex concubina nati, *Carpz.* [illegible] *de in jus voc.* [illegible] *Gail.* [illegible] SS ſive ſpurii, ſed reſpectu matris, non illuſtris, aliasque liberos *non habentis* [illegible] *C. ad SCt. Orph.* [illegible] Non etiam valet inter eos, qui ex damnato coitu nati. *N.* [illegible] Si aliquid relictum extraneo, ut uxori, parentibus &c. illud *accreſcit liberis*, [illegible] *C. fam. erc.* [illegible] *C. de teſtam.* niſi *duo teſtes* [illegible] ſint adhibiti *Carpz.* [illegible] *obſ.* [illegible] *C. de codicill.*

ſſ. Inſtituantur heredes etiamis ſolenniter [illegible] *Carpz.* [illegible] neceſſariò tamen *inſtituendi* [illegible] ſive *exheredandi* [illegible] nominatim, [illegible] *de lib. & poſth.* & quidem, *ſi pater* [illegible] *in Scriptura* [illegible] teſtetur, debet vel propria manu teſtamentum ſcribere, ac A tum teſtes non ſunt neceſſarii, *arg.* [illegible] *C. de teſtam. Carpz.* [illegible] vel ſubſcribere, [illegible] *quib. mod. pign. ſolv.* [illegible] *C. de teſtam.* [illegible] ac quidem de Jure Civ. ſpecialiter, ita quod in præcedentibus ultima ſua voluntas contineatur. *N.* [illegible] hodie tamen communis *ſubſcriptio* [illegible] [illegible] *Carpz.* [illegible] SS [illegible] Sola *ſubſignatio non valet.* [illegible] *H. Piſtor* [illegible] *Carpz.* [illegible] niſi teſtibus probetur, quod pater ipſe vel ejus juſſu alius ſignaverit, [illegible] Ut igitur ſubſcriptio valeat, requiritur (1) ut omnia integra litera ſcribantur: *N.* [illegible] *Carpz.* [illegible] (2) ut omnia liberorum nomina apponantur *N.* [illegible] (3) ut tempus *adjiciatur*, [illegible] dies &c. *Carpz. d. l.* a.

* Per [illegible] teſtari velit, ſufficit, ſi coram duobus teſtibus ſe declaret. *Carpz.* [illegible] & poſſunt hic eſſe teſtes, fœminæ, (qui probationis gratia tantum adhibentur [illegible] *qui teſt. fac.* [illegible] *Gail.* [illegible]) & qui *forte* [illegible] intervenerunt. *Gail.* [illegible]

Infirmatur vel ipſo jure, per agnationem heredis, & mutationem voluntatis, O e. g. cancellatione, deletione, &c. [illegible] *C. de teſtam.* [illegible] *Gail.* [illegible] *Novo teſtamento conſcribendo*, [illegible] modo ſecundum factum ſit ſolenniter, *N.* [illegible] & contineat clauſulam, quod per hoc pater velit priori derogatum. *N.* [illegible] ſi in eo extraneam *perſonam* [illegible] *adjecerit.* [illegible] *DD. ad Auth. hoc inter liberos. C. de teſtam. &c. vid. ſupr. ad tit. de inoff.* [illegible]

Teſtamentum tempore *PESTIS* factum, eſt etiam privilegiatum: [illegible] *C. de teſt.* SS [illegible] Ut locum habeat, requiritur morbus contagioſus, [illegible] *C. de teſtam.* ſive infectio, de perſona in perſonam tranſiens. [illegible] *Sennertus* [illegible] quæ deterret teſtes, [illegible] ut Peſtis, Febris Petechialis, [illegible] *Sennertus* [illegible] *de febr.* [illegible] Dyſenteria, *Carpz.* [illegible] (niſi levis ſit, quæ metum mortis non inferat) [illegible] In perſona vel domo teſtantis. [illegible] non enim ſufficit eſſe in

Pro-

provincia[m] hanc morbum, (*Deſſ. Bort. p. 3. concluſ. 1. n. 23.*) *Carpz. p. 3. c. 4. d. 4. Reſold. d. l. obſ. 38 Renſe. de teſtam. l. 2. p. 4. c. 17. n. 11.* aut tanta ſit peſtis, ut numerus ſeptenarius haberi non poſſit.

[illegible] Remiſſum hic de jure civili nihil eſt, quam *junctio* [nn] teſtium. *l. C. de teſtam.* non etiam numerus. Hodie *ſufficiunt II. vel III.* [oo] *Gail. 2. O. 118. n. 18. Carpz. 3. c. 4. d. 8.* etiam non rogati. *Ca. d. l.* & *feminæ*, [pp] *Ca. 3. c. 4. d. 8.* modò ſint animo & corpore præſentes, ac teſtatorem audiant & videant. *Carpz. 3. c. 4. d. 10. vid. Renſe. l. 3. p. 3. d. l. Ripa tr. de tempore peſtis* [illegible] *c. 101.*

[illegible] Valet tanquam ſolenne, etiam poſt morbum, *in perpetuum*, [qq] *l. C. de teſt. Ca. 3. c. 4. d. 7. & alios in locis c. de eod.*

58 Teſtamentum *RUSTICUM*, quod fit approbante Juſtiniano in *L. f. C. de teſt. & R. I. de anno 1512.* [illegible] und in dem Dorffe / da die Bauersleut / x. propter ſimplicitatem ac teſtium raritatem, *d. l. f. C. de teſt.* à ruſticis, (non etiam civibus ruri *degentibus*, [rr] *Renſe. p. 4. c. 15. d. 1. 2.*) in rure teſtantibus, nam ſic non poteſt teſtari in urbe, *Renſe. d. l.* aut *ſuburbanis*, [ss] *Ca. 3. c. 4. d. 30. n. 5.*

[illegible] Hic remiſſus eſt numerus teſtium, ac *ſufficiunt* [tt] *V. l. f. C. & R. I. de anno 1512.* non etiam *pauciores*, [uu] *arg. dd. ll.* [illegible] *p. 1. D. 28. Cabr. p. 4. D. 31. n. 4.*

[illegible] Quinta ſpecies teſtamenti minus ſolennis eſt teſtamentum *ad PIAS CAUSAS*, [xx] quod Jur. Can. valet, modò coram *duobus teſtibus ſaltem fi.* [yy] *c. 11. x. de teſtam. Tiraq. de priv. pia cauſa Ca. 3. c. 4. d. 33. 34. vid. Reckr. p. 1. d. 28.*

## Notæ variorum.

(1) [*Arbitrarie*] In Teſtamento [illegible] [illegible]

(2) [*Arbitr.*] [illegible]

(3) [*Nihil ſid*] Idem eſt in [illegible] auf den Leytern [illegible] [illegible] *Bergh.*

(4) [*Exceptio eſt in l. ...*] [illegible] Compagnen [illegible] *Bergh.*

(5) [*Morbo vago*] [illegible] *Bergh.*

(6) [*obſ. 15.*] In hac *l. 15. § 2.* [illegible] *Bergh.* [illegible]

(7) [*In hoſtium deprehenſ.*] [illegible] Ritter [illegible] [illegible] Marsch [illegible] Winter Quartiere [illegible] Marsch [illegible] Weiſung [illegible] Trouppes [illegible] *anno 1696.* [illegible] *Bergh.*

Yyyy yyy

(8) [*In*

[illegible]

[illegible]

[illegible]

[illegible]

[illegible] apud [illegible], conſil. 1348. [illegible]

[illegible]

[illegible]

[illegible]

[illegible]

(47) [illegible] [illegible]

(48) [illegible]

(49) [illegible]

(50) [illegible]

(51) [illegible]

(52) [illegible]

(53) [illegible]

(54) [illegible]

(55) [illegible]

# TITULUS II.

## De acquirenda vel omittenda hereditate.

*Junge l. 6 C. [illegible]*

Hereditas eſt univerſitas rerum à defuncto relicta, omnia jura commoda & incommoda comprehendens, [illegible] Circa quam conſideranda * DELATIO, quæ hereditas alicui defertur, [1] ſimulque jus conceditur, hereditatem oblatam acquirendi [illegible] quod fit jure prætorio, *de qua ad lib. 37.* vel jure civili ab inteſtato, *de qua inf.* vel ex teſtamento: idque vel directè, & datur hereditas, vel indirectè, ut fideicommiſſum dicitur. * ACQUISITIO quæ diverſo fit modo, *pro diverſitate heredum* [2] nam * NECESSARII tantum, [3] [ vel. [illegible] ut ſervus à Domino ſuo inſtitutus, [illegible] quique mortis tempore in ejus poteſtate eſt. [illegible]] acquirunt ipſo jure, [illegible] & abſtinere non poſſunt. [illegible] SUI ET NECESSARII, [4] ( ut liberi, qui fuerunt tempore * mortis in poteſtate patris teſtatoris, [illegible] licet tempore conditi teſtamenti non fuerint: [illegible] * debetur hereditatis proximi in familia. [illegible] aliquando etiam non proximi [illegible]) etiam nolentes patribus heredes exiſtunt. [illegible] nec abſtinere poſſunt, niſi pater eis permiſerit quod facere videtur, ſi eos inſtituat ſub conditione poteſtativa, [illegible] vel etiam per vulgarem ſubſtitutionem: Prætor tamen poſtea conceſſit beneficium abſtinendi. [illegible] poſt quod actu primo quidem ſtatim ſunt heredes, non etiam actu ſecundo, & *quoad effectum,* [5] antequam ſe immiſcuerint, quod *probandum* [6] à Creditore, [illegible] & præſumuntur, ſive *facto* [7] vel verbis declarent, ſe retinere velle hereditatem: [illegible] Lapſ. *reſtitutione* [8] [illegible]

* VOLUNTARII, ( ut ſunt, qui mortis tempore non fuerunt *in poteſtate* [9] teſtatoris domini vel patris, ut emancipati, &c. [illegible] aut liberi reſpectu matris, [illegible]) acquirunt agnitione & acceptione, quæ dicitur ADITIO: & eſt declaratio voluntatis, de hereditate ſibi delata ſuſcipienda.

Fit libera voluntate: [illegible] ( excipe heredem *fiduciarium,* [10] [illegible]) declaratione verbis quibuſcunque, vel *facto,* [11] ſc. ſi faciat quod ſine *jure heredis* [12] fieri non poteſt, [illegible] dummodò non conſtet de *alio ejus animo* [13] *Et ſciat* [14] heres teſtatorem eſſe defunctum, [illegible] ſibique hereditatem delatam, [illegible] pure vel *ſub conditione:* [15] [illegible] NON etiam ſub conditione, [illegible] nam *ſi actus legitimus.* [16] [illegible]

In acquirendo requiritur (1.) ut capax ſit tempore *delationis,* [17] *mortis,* [18] & *teſtam. facti.* [19] [illegible] (2.) ut voluntatem ſuam declaret: quod facere non poteſt ratione deſtitutus [illegible] ( ex curatoris tamen *furioſi* [illegible] [20] poteſt acquirere, [illegible]) nec infans, [illegible]

ſtip. ex æquitate tamen ſi ejus [illegible] in poſſeſſione eſt, [illegible] [illegible] ad. §. [illegible] C. de jur. delib. [illegible]) poſſit ſe obligare [illegible] [illegible] [illegible]) Pupillus, [illegible] de aut. tut. §. [illegible] ead. ſed requiritur tutoris autoritas. Impubes infantia major poteſt adire conſenſu patris, [illegible] §. [illegible] C. de jur. delib. ſi pater nolit, tum prætor adeatur, cujus decreto juvatur minor [illegible] §. [illegible] C. de jur. delib. [illegible]) Furioſus, qui curatorem habet [illegible] C. de curat. fur. vel [illegible] prodigus [illegible] [illegible] Reliqui omnes, adire poſſunt. Novo jure poteſt filius adire, citra patris conſenſum, & tum cedit adventitio irregulare [illegible] ſi verò conſentit pater, fit regulare [illegible] ſi filius pater invito filio adeat, tum omne patri acquiritur [illegible] C. de bon. quæ liber. Per procuratorem [illegible] & aliam perſonam adiri non poteſt [illegible] [illegible] tum, dum quis mandat hoc ſpecialiter, [illegible] quod omnino neceſſarium eſſet. [illegible] §. [illegible]) eo ipſo voluntatem ſuam ſatis declarat. [illegible] Peron. in C. de jur. delib. [illegible] Heredis heres [illegible] regulariter non poteſt adire, L. un. §. [illegible] C. de cadur. toll. [illegible] C. de jur. delib. niſi ſit ſuus heres, (hic tamen propriè loquendo non adit.) [illegible] [illegible] de adq. hæred. [illegible] §. [illegible] de caſtr. pec. [illegible] C. de ſuis & leg. Gail. [illegible] O. [illegible] Carpz. p. [illegible] d. [illegible] aut tranſmittat ex jure deliberandi, [illegible] C. de jur. delib. (modo, quæ ſorcit, [illegible] ſibi delatam [illegible] Carpz. p. [illegible] d. [illegible] intra annum [illegible] deceſſerit. d. L. [illegible]) aut per tranſmiſſionem Theodoſianam ex jure ſanguinis ſc. quando deſcendens [illegible] moritur, hereditate ab aſcendente delata, nondum autem acquiſita [illegible] L. un. §. [illegible] C. de cad. toll. L. un. C. de his qui ante apert. tab. aut heres juſto impeditus hereditatem non adierit ante mortem: tum enim ejus heres in integrum reſtituitur [illegible] §. [illegible] ad SC. Silan. [illegible] b. [illegible] de Carpzov. Edict. Carp. [illegible] d. [illegible]

O Hereditas [illegible] de H. vel A. V. [illegible] §. [illegible] §. [illegible] L. [illegible] non repudiata, [illegible] C. [illegible] Si partem agnoſcunt, totam hereditatem agnoſcere videntur [illegible] §. [illegible] C. de jur. delib. item eſt ſi legitimam (quæ hodie inſtitutionis titulo relinquenda. Peron. de repud. hered. [illegible]) aut ſex ſuam partem [illegible] [illegible] Fr. [illegible] Carpz. p. [illegible] d. [illegible] Non enim, ſi e. g. duo [illegible] ſint contenti, & repudient reliquam hereditatem, nam nec tum conferre tenentur, [illegible] ſ. de [illegible] modò reliqua libera ſalva ſit legitima. N. [illegible] Auth. Unde C. de inoff. teſt.

Q Adiri poteſt ſtatim ac delata eſt [illegible] heres tamen non debet actionibus inquietari, ante IX. dierum [illegible] Auth. Sed neque C. de ſepulc. viol. N. [illegible] Carpz. p. [illegible] d. [illegible]

R (1.) Heres habetur cum defuncto pro eadem perſona, [illegible] N. [illegible] præf. & tempore mortis [illegible] de R. J. [illegible]) Acquirit jus hereditarium, de quo ad tit. de h. vel. petit. (3.) Omnia jura, in hereditate reperta quæ defunctus habuit, [illegible] & ejus morte non ſunt extincta [illegible] de R. J. non etiam poſſeſſionem [illegible] rerum hereditariarum, ſine apprehenſione, [illegible] eſt) [illegible] de A. v. A. P. Poteſt tamen propria authoritate vacuam poſſeſſionem apprehendere; Titulo vero poſſidetur, pro repudiando [illegible] vel. ſupr. de hered. pet. Hodie in quibuſdam locis [illegible] etiam poſſeſſio h. in ipſo jure acquiritur. Gail. [illegible] Carpz. p. [illegible] d. [illegible] (4.) Obligatur creditoribus hereditariis, ex omnibus cauſis, ex quibus obligatus [illegible] fuit defunctus [illegible] C. de jur. delib. [illegible] & [illegible] O. & A. (5.) Legatariis tenetur obligatus [illegible] ex quaſi contractu §. [illegible] J. de obl. quæ quaſi ex contract. Hic deſcendit actio ex teſtamento.

D REPUDIATIO eſt declaratio voluntatis ab herede facta, de non agnoſcenda

C hereditate ſibi delata. 60. Perficitur voluntatis declaratione, quæ fit verbis, [illegible] vel. ſupr. h. & facto (e. g. ſi heres teſtamentarius agnoſcit legitimam, [illegible] ſ. [illegible] A. v. O. H.) Ab eo, qui adire poteſt. [illegible] pupillo ſine



tuto-

tutore, [illegible] C. de repud. hered. [illegible] filii aut patre absque [illegible] mutuo: [illegible] C. de bon. quae lib. Repudiatur hereditas [illegible] dolo [illegible] acquirendo [illegible] C. de repud. hered. Amittit jus acquirendi, [illegible] C. de repud. hered. [illegible] eandem causa, [illegible] §. [illegible] h.

*ABSTINERE* est voluntatem declarare, quod quis nolit hereditatem retinere, quam tali tamen acquisivit. vid. sup. [illegible] h.

## Notae variorum.

(1) [*Definitur*] [illegible]

(2) [*Pro derelicta hereditate*] [illegible]

(3) [illegible]

(4) [illegible]

(5) [illegible]

(6) [*Quod effectum*] [illegible]

(7) [illegible]

(8) [illegible]

[illegible]

(9) [illegible]

(10) [illegible]

(11) [illegible]

(12) [illegible]

(13) [illegible]

(14) [illegible]

(15) [illegible]

(16) [illegible]

(17) [*Sub conditione*] [illegible]

(18) [illegible]

(19) [illegible]

(20) [illegible]

(21) [illegible]

(22) [illegible]

(23) [illegible]

(24) [illegible]

(25) [illegible]

(26) [illegible]

(27) [illegible]

(28) [illegible]

(29) [illegible]

[illegible]

[illegible]

13 [illegible]

14 [illegible]

15 [illegible]

[illegible]

[illegible]

[illegible]

[illegible]

TT

# TITULUS II.

## De acquirenda vel omittenda hereditate.

*Junge I. 6. C. 1. 30. 31. & 32.*

Hereditas eſt univerſitas rerum à defuncto relicta, omnia jura commoda & incommoda comprehendens, [illegible] de H. P. [illegible] de R. I. Circa quam conſideranda * DELATIO, qua hereditas alicui defertur, [1] ſiveque jus conceditur hereditatem oblatam acquirendi [illegible] de V. S. [illegible] quod fit jure prætorio, de quo ad lib. 37. vel jure civili ab inteſtato, de quo infr. vel ex teſtamento: idque vel directè, & dicitur hereditas, vel indirectè, ut fideicommiſſum &c. * ACQUISITIO, quæ diverſo fit modo, pro diverſitate heredum [2] nam * NECESSARII tantum, [3] (vid. [illegible] ut ſervus à Domino ſuo inſtitutus, [illegible] quique mortis tempore in ejus poteſtate eſt. [illegible] de her. qual. [illegible]) acquirunt ipſo jure, [illegible] de hered. inſtit. [illegible] & abſtinere non poſſunt. [illegible] * SUI ET NECESSARII, [4] (ut liberi, qui fuerunt tempore * mortis in poteſtate patris teſtatoris, [illegible] licet tempore conditi teſtamenti non fuerint: [illegible] de lib. & poſth. [illegible] * delata hereditate proximi in familia. [illegible] de her. qual. & differ. vid. [illegible] de lib. & poſth. aliquando etiam non proximi. [illegible] vid. [illegible] de conſt. Serv. [illegible]) etiam nolentes patribus heredes exiſtunt, [illegible] de hered. quæ ab inteſt. [illegible] de ſuis legitim. nec abſtinere poſſunt, niſi pater eis permiſerit quod facere videtur, ſi eos inſtituat ſub conditione poteſtativa, [illegible] de cond. & dem. inſtit. [illegible] de H. I. vel etiam per vulgarem ſubſtitutionem: Prætor tamen poſtea conceſſit beneficium abſtinendi, [illegible] de her. qual. [illegible] de leg. [illegible] poſt quod actu primo quidem ſtatim ſunt heredes, non etiam actu ſecundo, & quoad effectum, [5] antequam ſe immiſcuerint, quod probandum [6] à Creditore, [illegible] & præſumatur, ſive facto [7] vel verbis declarent, ſe retinere velle hereditatem: [illegible] de H. I. [illegible] de fideicomm. libert. Lapſi reſtituuntur. [8] [illegible]

* VOLUNTARII, (ut ſunt, qui mortis tempore non fuerunt in poteſtate [9] teſtatoris dominica vel paterna, ut emancipati, &c. N. [illegible] aut liberi reſpectu matris, [illegible] de B. P. ſecundum tab. [illegible] de her. qual.) acquirunt agnitione & acceptione, quæ dicitur ADITIO & eſt declaratio voluntatis, de hereditate ſibi delata ſuſcipienda.

Fit libera voluntate: [illegible] C. de jur. delib. [illegible] de O. & A. (excipe heredem fiduciarium. [10] [illegible] de fideicomm. hered.) declarato verbis quibuscunque, vel facto, [11] &c. ſi faciat quod ſine jure heredis [12] fieri non poteſt, e. g. [illegible] de her. qual. dummodò non conſtet de alio ejus animo [13] Et ſciat [14] heres teſtatorem eſſe defunctum, [illegible] de H. vel A. [illegible] ſibique hereditatem delatam, [illegible] de hered. qual. ex cauſa teſtati &c. [illegible] pure vel ſub conditione: [15] [illegible] NON etiam ſub conditione, [illegible] nam eſt actus legitimus. [16] [illegible] de R. I.

In acquirente requiritur (1.) ut capax ſit tempore adeundi, [17] mortis, [18] & teſtam. facti. [19] [illegible] de H. I. (2.) ut voluntatem ſuam declaret: quod facere non poteſt ratione deſtitutus. [illegible] de R. I. [illegible] (ex æquitate tamen furioſi curator [20] poteſt acquirere, [illegible] C. de curat. furioſ. vid. [illegible] de cur. fur.) nec infans, [illegible] de [illegible]

ſup-

*ſup.* ex æquitate tamen ejus p[illegible] cujus in poteſtate eſt, [illegible] 18. §. 1. 2. *C. de jur. delib.* ) poſſit ſe obligare: unde *excluditur* [illegible] (a) Pupillus, [illegible] *de aut. tut.* §. 1. *I. eod.* ſed requiritur tutoris autoritas. Impubes autem major poteſt adire conſenſu patris, [illegible] *C. de jur. delib.* ſi pater nolit tum prætor adeat, cujus decreto juvatur minor [illegible] *C. de jur. delib.* (·) minor, qui curatorem habet [illegible] *C. de in integr. reſt.* (y) prodigus [illegible]. Reliqui omnes, adire poſſunt. Novo jure poteſt filius adire, extra patris conſenſum, & tum cedit adventitium *irregulare* [illegible] ſi verò conſentit pater ſit *regulare* [illegible] ſi filius pater invito filio adeat, tum omne patri acquiritur [illegible] *C. de bon. quæ liber.* *Per procuratorem* [illegible] & aliam perſonam adiri non poteſt: *N.* [illegible] nam, dum quis mandat hoc ſpecialiter, [illegible] quod omnino neceſſarium eſſet. [illegible]) eo ipſo voluntatem ſuam *jam declarat.* [illegible] *Perez. in C. de jur. delib.* [illegible] *Heredis heres* [illegible] regulariter non poteſt adire, *L. un.* §. [illegible] *C. de caduc. toll.* [illegible] *C. de jur. delib.* niſi ſit ſuus heres, (ſic tamen propriè loquendo *non adit,*) [illegible] *de reb. dub.* [illegible] *de caſtr. pec.* [illegible] *C. de fam. & ſign.* *Gail.* [illegible] *Carpz.* [illegible] aut tranſmittat ex jure deliberandi, [illegible] *C. de jur. delib.* (modo, quia *ſummo,* [illegible]) ſibi delatam [illegible] *Carp.* [illegible] *intra annum* [illegible] deceſſerit. [illegible]) aut per tranſmiſſionem Theodoſianam ex jure ſanguinis ſc. *quando deſcendens* [illegible] moritur, hereditate aſcendentis delata, nondum autem acquiſita. *L. un.* §. [illegible] *L. de cad. toll.* *L. un. C. de his qui ante apert. tab.* aut heres juſte impeditus hereditatem non adierit ante mortem: tum enim ejus heres in integrum *reſtituitur.* [illegible] *ad SC. Silan.* [illegible] *de Carpzo* [illegible] *Carp.* [illegible]

Hereditas [illegible] *de H. vel A. H.* [illegible] delata, [illegible] *non repudiata.* [illegible] *C. de repud. hered.* Si partem agnoſcunt, totam hereditatem agnoſcere videntur [illegible] *C. de jur. delib.* idem eſt ſi legitimam (quæ hodie inſtitutionis titulo relinquenda [illegible] *Perez. de repud. hered.* [illegible] *aut ſine lure parva* [illegible] Non enim, [illegible] ſint contenti, & repudient reliquam hereditatem, nam nec tum conſtare *videntur,* [illegible] *de inoff. teſt.* modò reliqua libera ſalva ſit legitima. *N.* [illegible] *C. de inoff. teſt.*

Adiri poteſt *ſimul ac delata eſt* [illegible] heres tamen non debet actionibus inquietari, *ante IX dierum* [illegible] *C. de ſepulc. viol.* *N.* [illegible] *Carpz.* [illegible]

(1.) Heres habetur cum defuncto pro *eadem perſona,* [illegible] *N.* [illegible] *à tempore mortis* [illegible] (2.) Acquirit jus hereditarium, *de quo ad tit. de b. vel. poſs.* (3.) Omnia jura, in hereditate reperta quæ defunctus habuit, [illegible] & ejus morte non ſunt *extincta* [illegible] non etiam *poſſeſſionem* [illegible] rerum hereditariarum, ſine apprehenſione, (quæ facti eſt) [illegible] *de A. v. A. P.* Poteſt tamen propria authoritate vacuam poſſeſſionem apprehendere; Titulo vero poſſidens, *jure repellendus* [illegible] *ſup. de hered. pet.* Hodie in quibusdam *locis* [illegible] etiam poſſeſſio hæc ipſo jure acquiritur. *Gaddus* [illegible] *Zaſ.* [illegible] *Carpz.* [illegible] (4.) Obligatur creditoribus hereditariis, ex omnibus cauſis, ex quibus *obligatus* [illegible] fuit defunctus. [illegible] *C. de jur. delib.* [illegible] (5.) Legatariis *videtur obligatus* [illegible] ex quaſi contractu. §. 5. *J. de obl. quæ quaſi ex contract.* Hic deſcendit actio ex teſtamento.

*REPUDIATIO* eſt declaratio voluntatis ab herede facta, de non agnoſcenda hereditate ſibi delata. 60. Perficitur voluntatis declaratione, quæ fit verbis, [illegible] & facto (e. g. ſi heres teſtamentarius agnoſcit legitimam, [illegible]) Ab eo, qui adire poteſt, [illegible] *furioſo,* [illegible] *arg.* [illegible] pupillo ſine tuto-

tatore, 1. C. de repud. hered. [illegible] de Aut. [illegible] filio [illegible] patre absque consensu [illegible] [illegible] C. de bon. quæ lib. Repudiatur hereditas [illegible] [illegible] C. de repud. hered. Amittitur jus acquirendi, [illegible] C. de repud. hered. [illegible] eadem causa [illegible] §. [illegible]

ABSTINERE eſt voluntatem declarare, quod quis nolit hereditatem retinere, quam ſola ſuitate acquiſivit. vid. ſup. [illegible]

## Notæ variorum.

(1) [Deferuntur] [illegible]

(2) [illegible]

(3) [illegible]

(4) [illegible]

(5) [illegible]

(6) [Quoad effectum] [illegible]

[illegible]

[illegible] ex confirmatione [illegible], vel [illegible] [illegible] [illegible] [illegible] vid. [illegible] *Zaſius* [illegible] *Accurſ.*

(9) [*Sub conditione*] [illegible] *Accurſ.*

(10) [*In perpetuum*] ſcilicet in parte quoad hereditatem hanc, eſt [illegible] [illegible] [illegible] *Accurſ.*

(11) [*Substituerunt*] [illegible] [illegible] [illegible] [illegible] [illegible] hereditatem [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] hereditatem [illegible] [illegible] [illegible] [illegible]. [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] *Accurſ.*

(12) [*Pacto*] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] *Accurſ.* [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] *Zaſius* [illegible]

(13) [*Jure hereditario*] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] hereditatem [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] *Accurſ.*

(14) [*Ante quae*] [illegible] [illegible] [illegible] [illegible] [illegible] hereditatem [illegible] [illegible] [illegible] *Accurſ.*

(15) [*Et ſinit*] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] *Accurſ.*

(16) [*Ind.*] [illegible] [illegible] [illegible] hereditatem [illegible] [illegible] [illegible] *Accurſ.*

(17) [*Sub conditione*] [illegible] [illegible] [illegible] [illegible] [illegible] hereditatem ſub conditione

[illegible] [illegible] [illegible] [illegible] [illegible] *Accurſ.*

(18) [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] *Accurſ.*

(19) [*Minores*] [illegible] [illegible] [illegible] *Accurſ.*

(20) [*Mortuo*] [illegible] [illegible] *Accurſ.*

(21) [*Teſtamento facto*] [illegible] [illegible] [illegible] *Accurſ.*

(22) [illegible] [illegible] [illegible] *Accurſ.*

(23) [*Facultatem*] [illegible] [illegible] hereditatem [illegible] [illegible] *Accurſ.*

(24) [*Prodigus*] [illegible] [illegible] [illegible] [illegible] hereditatem [illegible] [illegible] [illegible]

(25) [*Repudiare*] [illegible] [illegible] *Accurſ.*

(26) [*Repudiare*] [illegible] [illegible] *Accurſ.*

(27) [*Per Procuratorem*] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] *Accurſ.* [illegible] hereditatem [illegible] [illegible] [illegible] [illegible]

(28) [*Lata diximus*] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] hereditatem [illegible] [illegible] [illegible] [illegible] *Accurſ.*

(29) [*Hereditate*] [illegible] [illegible] [illegible] *Accurſ.* [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] *Ruinus ad Bartol.* [illegible]

Margin notes: [illegible]

[illegible]

[illegible]

(41) [Anno II. item] [illegible]

(42) [Eadem persona] [illegible]

(43) [Tempore mortis] [illegible]

(44) [Tutela] [illegible]

(45) [Possessionem] [illegible]

(46) [Jure ex[illegible]] [illegible]

[illegible]

(48) [*Obligatus*] Quia dum in defuncti locum tranſit, tranſit quoque in ejus obligationem ſive contractum. *Bryk.*

Legatario, heres obligatur ex quaſi contractu.

(49) [*Neutiquam obligatur*] Nec enim defunctus ea obligatus erat, ſed pro libitu legata revocare poterat. Naſcitur ergo demum legatario actio ex *quaſi contractu*, ſive aditione hereditatis, quia hâc repudiata, legata corruunt. *Bryk.*

(50) [*Legitimam*] Sive ab inteſtato ſucceſſionem. *Bryk.* Intellige *Hereditatem*. Ne putes *Legitimae* appellatione hic venire portionem illam olim *quartam*, nunc *tertiam*, vel dimidiam. Hanc enim *legitimam* ſi quis agnoverit non cenſetur hereditatem teſtamentariam repudiaſſe, ſed agnoviſſe, ut *Autor pag. prec.* docuerat. quem ſi de portione hac legitima intelliges, nec ſecum (quod Auctoribus aliquando etiam viſum ſex) pugnare videtur. Cæterum tanto quam *Autor* ſupra mediat hic verba: *Qua hodie inſtitutionem tuendo relinquenda* parum ſtringe. Nam (1) id falſum eſt indiſtincte ita prolatum, vide *Brunneman. aur. repud. cap. 5.* Tum (2) id ad ſucceſſionem ab inteſtato tantum ſpectat. Interim pro *Autoris* ſententia, legitimam ſe agnere non poſſe repudiata reliqua hereditate, vid. *Fachin. 4. contr. 65. Perez. C. h. t. n. 7.* ubi limitat. Aliter adhuc limitabit ex iis quæ proponit *D. Voet. ff. h. t. n. 5. Peguſſb. h. num. 2.*

Is poteſt hereditatem repudiare, qui poteſt adire.

(51) [*Non etiam furioſo*] *Quicunque non poteſt adire, nec repudiare poteſt*; Cujus enim non eſt velle, ejus nec nolle. *Bryk.*

(52) [*Delata*] Hodie etiam heredem ſub conditione inſtitutum hereditatem ante conditionem exiſtentiam recte repudiare contra *a. l. 13. ff. h.* affirmat *Schilter. ad ff. Ex. 38. § 160.* Certè pactum hereditatis renunciativum legitime celebratum, cur minibus ſufficere eo caſu eſſe debeat non video. *Menck.*

(53) [*Non acquiſita*] Poſtquam enim ſemel adita, per aditionem ſive acquiſitionem jus aliquod creditoribus quaſitum contra heredem, à quo ſuo facto ſe liberare nequit. Secus tamen de jure Saxonico. Ubi intra annum repudiari poteſt hereditas redditis rationibus, vid. *Strauch. Ex. 34. th. 33.* Imò ſi hereditas ſemel acquiſita, ſi poſtea repudietur nullo exiſtente creditore non tranſit ad heredes ab inteſtato, ſed fit res nullius & cedit occupanti. *Bryk.* Jure *Sax. comm.* edito tamen inventario, vel parata ſpecificatione ſemper fieri poteſt, quia heres ultra vires hereditarias non tenetur. *arg.* L. R. *lib. 1. art. 6.* & curatori bonorum onus diſtribuendi hereditatem relinquere, ſuum verò creditum petere poteſt, ceu reſponſum ap. *Carpz. l. 6. R. 73. Strauch. h. Ex. 34. th. 33.* At *Jure Lub.* hereditatem aditam ita demum repudiare permiſſum, ſi intra tempus deliberationi ad ſiat, inventario vel ſpecificatione juramento confirmanda adjudicabiter inſtituta, una cum obtentione ad juramentum quo eadem corroboretur. *Dec. Ll. 57. Menck.*

Semel adita hereditas, repudiari nequit.

# TITULUS III.

## Teſtamenta, quemadmodum aperiantur &c.

*Junge L. 6. C. tit. 32 & 51.*

A De APERTURA [1] tabularum *Vid. L. un. §. 5. C. de caduc. toll. & transacti.* Eſt vel * *ſimplex*, [2] quæ fit ſine omni ſolennitate, ut heres vel alii cognoſcant, quis ex tabb. heres ſit inſtitutus, & quæ ibi ſcripta, *cognitionis gratia.* [3] *Cu. 5. t. 5. l. 24. inf.* Fieri tamen ſolet coram viris honeſtis, qui tabb. inſpectas iterum de novo ſignant, in futuram ſolennem publicationem. D

B * *Solennis* [4] fit coram *judice* [5] competente, *convocatis hominibus*, [6] & omnibus, quorum intereſt, *ſive & teſtibus* [7] qui ſigna & ſubſcriptiones *recognoſcunt*, [8] *4. 6. in pr. & fin. h. 2. C. h.*

*Petunt eam heres*, [9] legatarius & alii quivis, quorum intereſt. *1. pr. v. 2. pr.* modò præſtet *juramentum calumniæ*, [10] *3. C.* quo facto judex compellit poſſeſſorem, ad tabb. exhibitionem ac aperturam, qui ſe neget, recurritur ad interdictum de tabb. exhib. 1. §. 1. *de tabb. exhib.* 2. §. *f. h.* Si verò hoc neget heredi, tum agitur actione ad exhibendum, vel *rei vindicatione.* [11] *3. §. 5. ad exhib.* G

Omnia

Omnes ſunt aperiendæ & legendæ, quæ in [illegible] inveniuntur, [illegible] quam [illegible] intra certum tempus [illegible] aut quæ continet alterius [illegible] C. [illegible] (tabulæ authenticæ, [illegible] exempla [illegible] [illegible]

Aperiendarum [illegible] PUBLICATIO, [illegible] ad Archivum, [illegible] quæ [illegible] teſtamento [illegible] quod [illegible] cum plerumque ſunt teſtamenta coram judice, vel notario, & in publicum redigantur inſtrumentum, quod per ſe ſatis probat, [illegible]

## Notæ variorum.

(1) [illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

per caſum ipſe Auctor [illegible] de ſid. [illegible] fore, ſi teſtamenta propria probandi virtute deſtituerentur. Denique (3) l. 18. C. de teſtam. nihil in contrarium facit: nam verba in eodem loco referuntur non oſtendunt, quod publicatio neceſſario ſit facienda, ſed quod peti poſſe quod verba antecedentia *Publicari ſolent*, [illegible] præterea ibi non agitur de *publicatione*, [illegible] ſed de [illegible], quæ ſolent in [illegible] collegii [illegible] & conſervatione aſſeverare, denique verba modo relata, dubia ſunt, cum potius legi debeat *In eodem referuntur*, [illegible] *D. Thomaſ. in Diſſ.* [illegible] § 31 [illegible] l. 4. C. *Theodoſ. eod. tit.* [illegible] ex qua d. l. 18. C. de teſt. deſumta eſt. *Titius.*

A publicatione hac non datur appellatio.

(16) [illegible] *obſervatur*, [illegible] ſi alias teſtamentum *VII teſtibus* [illegible], raro hodie recurritur ad aperturam [illegible], niſi [illegible] excluſa. Unde non requiritur (1), ut teſtamentum apud Principem vel [illegible] Conſiſtorium (2) apud acta Magiſtratus conditum, (3) [illegible] nuncupativum, de quo *Notarius* ſolent inſtrumentum conficere, nec (4) quando teſtator [illegible] mortem ſuam curat, ut teſtes [illegible] præſente *Notario* coram ipſo compareant, manus ſigillaque recognoſcant, & poſtea ſuper hoc conficiatur inſtrumentum publicum, *Brunn.* [illegible] Appellare tamen a publicatione hac nemo poteſt, publicatio enim non gravat heredem, [illegible] *diſpoſitione* quæ non appellando ſed impugnando per ordinaria juris remedia [illegible]. Ad hoc autem ſi [illegible], quiſque [illegible], ſi nullum, [illegible] admittenda. Cæterum honorarium,

Honorarium pro apertura [illegible] heredibus.

quod pro apertura teſtamenti debetur, [illegible] heredi [illegible] ſolvendum, *Carpz.* [illegible] 26. [illegible] Publicatio [illegible] apud acta publicatur, & perpetua fides [illegible], l. 18. C. de teſtib. [illegible] *teſtamentis privata fide* [illegible], præcipue nuncupativis. *Carpz.* [illegible] 3. c. 5. d. 25. *Brunn. ad l. 2. C. de teſt. n. 9.* [illegible] eſt [illegible], ut originale [illegible] probatio ab aliis peti queat. *Idem ad d. l. n. 10.* [illegible] publicatio eſt [illegible], unde à Decreto de publicando non admittendam eſſe appellationem, [illegible] *de appell. rec.* [illegible] In *Sax. Elect.* eadem appellatio ab inferiore [illegible] ſecundum *appell.* [illegible] de a. 1650 [illegible] Non tamen ob [illegible], ſed quia publicatio non eſt neceſſaria. Teſtamenta enim privata per ſe probant. Quo autem ut probandi gaudeant, teſtium recognitio erit adhibenda, [illegible] ſine, non propter aperturam, [illegible] neque tamen recognitio illa præciſe erit neceſſaria, cum poſſe etiam per alios manus & ſigilla intelligentes, aut per comparationem literarum & *ſigillorum authentica* oſtendi. Ex quo [illegible] ſequitur, quod uno [illegible], [illegible] teſtibus mortuis, [illegible] teſtamentum non [illegible], quod [illegible] falſa hypotheſibus [illegible], vid. *Brunn.* [illegible] 34. [illegible] 42. [illegible] ſi duo teſtes [illegible] teſtamento [illegible] falſo, [illegible] probari [illegible] [illegible], ut uno teſte [illegible], ſuppletorio juramento etiam locum fieri poſſe, [illegible] habere videtur *Titius.*

# TITULUS IV.

## Si quis omiſſa cauſa teſtamenti ab inteſtato vel alio modo poſſideat hereditatem.

*Junge L. 6. C. t. 30.*

SI *heres ſcriptus ſit*, (1) qui poteſt adire hereditatem ex teſtamento, 2. C. & [illegible] *ab inteſtato* (2) velit ſuccedere, in fraudem legatariorum, &c. 1. §. [illegible] vel pecuniam accipiat, ne adeat, 1. C. h. [illegible] Tum prætor dat *actionem* [illegible] *legatariis*, [illegible] & fideicommiſſariis, contra heredem ſcriptum, & alios heredes, qui pecuniam dederunt ſcripto, ut abſtineat 1. §. f. [illegible] pr. Scriptus tamen habet beneficium *excuſſionis*, (5) [illegible] §. [illegible] h.

## *Notæ variorum.*

(1) [*Si heres ſcriptus ſit*] Sæpe heredes ſcripti & legitimi contra voluntatem defuncti legata [illegible], [illegible] ſenſibus, quam legatarius debitum, eludere conantur. Horum [illegible] Prætor, ac [illegible] ut [illegible] mali-

> Duplici ju[illegible] gaudens, alterum [illegible] potest.

> Omnes inſtituti ſed nunquam ab inteſtato de[illegible] adeuntes heredem, [illegible] actiones [illegible].

> In Nov. 115 [illegible]

[illegible] ſint ſinguli teneantur, quæ omnia adeò non *Romana*, ſed *naturalia ſunt. Titius.*

(2) [*Dolose*] *Quoties quis duplici jure gaudet, potest altero uti, & alterum repudiare poteſt.* Niſi hoc faciat in præjudicium tertii. *Stryk.*

(3) [*Ab inteſtato*] Idem quoque obtinet, ſi inſtitutus heres accepta pecunia hereditatem repudiatam in ſubſtitutum fraudulenter transferat, ubi pariter hac actione ad legata præſtanda in pœnam acceptæ pecuniæ tenetur, *l. 2. & 3. h. Stryk.*

(4) [*Utiles actiones*] Scil. ex teſtamento h. e. quaſi reverà hereditatem ex teſtamento adiiſſet, tenebatur enim adire, quod dum non fecit, Prætor præſumit, eum reverà adiiſſe. Aliud tamen eſt, & ceſſant hæ actiones, quando teſtator heredi alternativam permiſit, an ſc. hereditatem ex teſtamento, an verò ab inteſtato adire velit, *l. 6. ff. h. t. Stryk.* Actio *utilis ex teſtamento* eſt prætoria *l. 1. ff. h.* rei perſecutoria perpetua *l. 12. §. 1. ff. h.* daturque illi, cui aliquid directè, aut per fideicommiſſum teſtamento relictum eſt, *l. 2. ff. h.* ejusque heredibus. *l. ſ. C. ſi omiſſ. ſit cauſ. teſt.* adverſus eum, qui cum ex teſtamento poſſit obtinere heredi[illegible] in fraudem legatariorum, vel fideicommiſſariorum ab inteſtato ſucceſſit, *l. 2. C. h. l. 1. ſ. ff. h. l. 16. ff. h.* vel pretio accepto hereditatem prætermiſit, *l. 2. ff. h.* (hic autem excuſſo poſſeſſore hereditatis demum conveniendus eſt *l. 2. §. 1. ff. h.*) ejusque heredes *l. 12. §. 1. ff. h.* ad hoc, ut præſtet idem, quod hereditate adita præſtandum fuiſſet *l. 1. l. 12. §. 1. ff. h.* Hodie adhuc *inſtitui* [illegible] *poteſt*, *Mev. p. 7. d. 61. Sand. l. 4. t. 4. d. 10. Mencken.*

(5) [*Legatarius*] Hoc beneficio Prætoris adhuc hodie opus eſt, nam per *Nov.* 115. *c.* 3. non generaliter ſuſtinentur legata everſo teſtamento, ſed tantum, ſi ex capite iniquæ exheredationis & præteritionis impugnetur teſtamentum. *Stryk.*

(6) [*Excuſſione*] H. e. ut ille prius excutiatur, ad quem hereditas repudiata pervenit. *Stryk.*

# TITULUS V.

## De Senatusconſulto Silaniano & Claudiano, quorum teſtamenta ne aperiantur.

*Junge L. 6. C. t. 35.*

Hoc SCto prohibetur apertura tabb. & aditio hereditatis, *4. ff. h.* teſtatoris vi occiſi, *1. pr. & §§. ſeqq. h.* antequam *de familia quæratur*, (1) & ſupplicium de noxiis ſumtum: *1. pr. 3. §. 17. 5. §. h. ſ. C.* Si contra fiat dolo, amittitur relictum in teſtamento illo, & *fiſco vindicatur* (2) *3. §. 2. h.* contra eum, *cui nihil* (3) relictum, datur actio popularis in 100. aureos, quorum 50. fiſco 50. actori adjudicantur, contra regulam *L. 12. de V. S. 25. §. 2. h.* Ab hac pœna tamen liberantur (1.) *minores* (4) *6. C.* (2.) heres, qui ignorat occiſionem, *3. §. 21.* (3.) quem alius prævenit in accuſatione, *10. C. v. 15. h. Carpz. 1. q. 34. n. 73.* Hodie hoc *non obſervatur*, (5) *arg. Ord. Crim. art. 124. Carpz. 1. q. 34. n. 73. Clarus lib. 5. recept. ſent. q. 78. Diſſ. Hug. 2. quæſt. 34.*

### Notæ variorum.

[*Ad rubr.*] Differentia horum *SCtorum* ſequens eſt, quod *illud* ſit prius factum, & pertineat ad quæſtionem omnium ſervorum. *Hoc* verò, quod *Neronianum & Piſonianum* dicitur, ſit poſterius, & concernat tantum ſervos, quibus libertas eſt data, *Sand. ad Ert. p. 754. SCtis Silaniano*, quod temporibus *Auguſti Dolabella & Julio Silano Conſ.* conſtitutum duo potiſſimum capita ſuerunt. Primum, ne heres defuncti teſtatoris necem linqueret inultam, niſi velit ut indignus à ſucceſſione excludi quod *à l. 3. 6. 9. & 10. ſ. h. & quib. ut indign.* patet. Alterum, quod verba *Verrarius ad Ann. Tac.* [illegible] *c. 32* referunt: Domino occiſo ne ſervis, qui ſub eodem tecto in eadem ve regione fuiſſent, quæſtio haberetur, ſupplicium de reis ſumeretur, priusquam aperiri tabulas, aditivè hereditas ſcripto ab herede poſſet alias ut ab indigno ablata publicaretur, neque differt ab eo *SCtum Claudianum*, quam quod referam verbis ejusdem *Verrarii* [illegible] Deinde, ut naturaliter crevare ſolet ſapè interpretatio deſiderata autoritatem, cum ambigeretur, an de ſervis

 quibus

[illegible] quod de [illegible] [illegible] [illegible] ad [illegible] [illegible] De [illegible] quoque ſervis, qui [illegible] [illegible] [illegible] ſupplicium [illegible]. Conſ. Tac. Ann. 13. c. 34. Quæ vero plura [illegible] SCta fuerint con[illegible], & ut [illegible] confundi ſoleant, & quare [illegible] [illegible] & [illegible] [illegible], quod [illegible] [illegible] & [illegible] [illegible] [illegible] [illegible], [illegible] Collega [illegible] [illegible] [illegible], vel apud [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] SCto caput non [illegible] [illegible] [illegible] [illegible] [illegible] ad L. 16. C. de [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] ad SCtum [illegible] [illegible] [illegible] [illegible] [illegible] 3. § 3.

Servi potiſſimùm apud Romanos torqueri poterant.

(1) [De familia quæratur] Servi apud Romanos [illegible] torqueri poterant, non verò liberi [illegible]: quia ergo contingere poterat, ut quidam ſervi eſſent manumiſſi, qui [illegible] [illegible] [illegible] [illegible], [illegible] SCtum hoc [illegible], ut [illegible] [illegible] [illegible] in [illegible] [illegible]. Verum hæc hodie [illegible], [illegible] [illegible] [illegible] [illegible], tamen [illegible] [illegible] [illegible] [illegible]. Imò hodie [illegible] [illegible] [illegible] [illegible], niſi in [illegible] [illegible] ſit de [illegible]. [illegible]

Pœnas [illegible] [illegible], leges [illegible] [illegible] [illegible].

(2) [Poſt [illegible]] Qui tamen [illegible] [illegible] [illegible] [illegible], l. 16. §. [illegible] de his quæ ut ind. [illegible] Hæc pœna cum hodie [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] tempore, [illegible], [illegible] [illegible] vel [illegible] [illegible] [illegible], vel [illegible] [illegible] [illegible], [illegible] O C art 214 [illegible] c. 5 [illegible] [illegible] [illegible] [illegible] hæc [illegible], ſi ad [illegible], [illegible] [illegible] [illegible] [illegible] [illegible] [illegible], l. 5. § [illegible] ff. h. t. 22. ff. h. [illegible] [illegible] ad ff. [illegible] 38. §. 179. [illegible] p. 2. q. 34. n. 10. [illegible]

(3) [[illegible]] [illegible] [illegible] [illegible] vel [illegible] [illegible]. [illegible]

[illegible] in [illegible] [illegible] [illegible].

(4) [[illegible]] [illegible] [illegible] in [illegible] [illegible] [illegible] [illegible] [illegible], & [illegible] [illegible] [illegible] [illegible], quæ [illegible] [illegible] ad l. [illegible] 37 ff. d. [illegible] [illegible]

(5) [Non obſervatur] Jure [illegible] [illegible], [illegible] [illegible], [illegible] [illegible] [illegible] [illegible] [illegible]. [illegible] tamen [illegible] [illegible] [illegible], ubi tamen ſi [illegible] ſe hereditate, [illegible] [illegible] [illegible] [illegible] ſoleat. [illegible] [illegible] 14 [illegible] 50. [illegible] p. 4. c. 31. d. 10. Si [illegible] [illegible] & liberi, vel ob [illegible], vel quod DEO [illegible] [illegible], vel ob [illegible] [illegible] à corpus [illegible] [illegible], [illegible] [illegible] in [illegible] [illegible] [illegible] [illegible] debet. [illegible] p. 5. d. 301 [illegible] [illegible] [illegible] hanc [illegible] [illegible] hodie ſervant, ut, ſi heres [illegible] [illegible] [illegible] [illegible] [illegible], ut [illegible] [illegible] [illegible] [illegible], vel [illegible] [illegible] [illegible] & hæc [illegible] [illegible], docet Dn. D. GOEZE in [illegible] Diſſ. de [illegible] [illegible] [illegible] [illegible] [illegible] 1699 [illegible] in ſpecie § 24. Quod [illegible] [illegible] lib. 2. [illegible] [illegible] art 16. à [illegible] [illegible] hæc in [illegible] non valde [illegible]. [illegible]

# TITULUS VI.

## Si quis aliquem teſtari prohibuerit vel coeg.

*Junge L. 6. C. tit. 34.*

Si teſtamentum fieri, vel factum corrumpi, dolo vel metu *prohibeat*, [a] heres ab inteſtato, vel in illo teſtamento ſcriptus, ejus portio *fiſco* [b] cedit, l. pr. [illegible] qui deducta Trebell. legata & fideicommiſſa *ſolvit*: [c] l. §. 1. L. 2. §. 2. uterque etiam tenetur *ad intereſſe*, [d] actione de dolo, [illegible] de. leg. 2. vel *in factum*, [e] §. ſ. ad L. Aquil. [illegible] Hoc autem *coheredibus nihil nocet*, [f] 2. §. 1. h. [illegible] *tertius, tum *heredibus nihil nocet*: [g] [illegible] C. de pœn. vid. tamen 2. §. 1. [h] **cogit* [i] aliquis, teſtamentum eſt *ipſo jure nullum*, [k] ſive dolo effectum, arg. 15. de. jurisd. 1. §. 3. de ſerv. corrupt. [illegible] [illegible] ad W. h. (Diſſ. [illegible] [illegible] Q. [illegible] 305. [illegible]) ſive metu & vi coactum ſit: [illegible] C. de S. S. Eccleſ. [illegible] §. ſ. qui teſt. fac.

[illegible]

Poteſt etiam contra [illegible]

[illegible]

## Notæ variorum.

[illegible]

[illegible]

illum impediat, nec obſtat, quod hic rationem non delinquent, ſed heres ex inteſtato puniatur! Neque enim hoc fit, cum cogens praſtas licet fiſco hereditate, perinde ac prohibens alios, ad quos hereditas alias fuiſſet devoluta, ad intereſſe teneatur. *Tit.*

Nihil magis hominibus debetur quam ut ſupremæ voluntatis liber ſit ſtylus

(11) [*Obſtat* 21.] Hic dicitur, quod coacta voluntas tamen ſit voluntas. Verum intelligendum hoc tantummodo eſt de actibus inter vivos, & hunc ad teſtamenta, ſive actus *ultimæ voluntatis* non extendendum. *Berger.* Nihil enim eſt, quod magis hominibus debeatur, quam ut ſupremæ voluntatis, poſtquam jam aliud velle non poſſunt, liber ſit ſtylus, & licitum, quod iterum non redit, arbitrium, *L. habeat 1. C. d. SS. Eccleſ. Strijk, An teſtamentum nova & ne conditione ſit ipſo jure nullum?* Aff. *arg. l. 32. d. her. inſtit. ibi, non ex alieno arbitrio pendere l. 20. §. ult. qui teſtam. fac. poſſ. ibi. ſi deceat ſine vertere, non valere,* ubi conditio, tollens infert nullitatem. Ergo multo magis conditio teſtatoris. Ad Obſt. *l. 21 §. pen. ibi pater me heredem eſſe, & §. ult. ibi Prætor mihi ſuccurrit ff quod met. cauſ.* *Reſp.* Loqui de actibus inter vivos *d. l. 21 §. pen. ibi conditio adje. & §. ult. ibi conditus hereditatem repudiarem.* Alioquin regula *Vt nemoque facto ſummo jure valere,* in ultimis voluntatibus non procedit, *arg. l. 5. d. l. 20 d. V. S. Berger.*

(12) [*Profanamentum*] Si ipſe teſtator fateatur, ſe importunis ſollicitationibus ad teſtamentum acceſſiſſe, ſeque malle teſtamentorum mutare, ſi bona venia heredis id fieri poſſit, tunc enim vitiatum erit teſtamentum, licet teſtator non exprimat, corpus metu compulſum ſe. *Carpz. c. l. Strijk.*

(13) [*Sunt nulla*] Ergo locus eſt ſucceſſioni ab inteſtato. Quod ſi verò heredis inſtitutio ſit voluntaria, ad legata autem compulſus ſuit, manent legata nulla, verum non heredi ab inteſtato ſed heredi ſcripto relinquuntur. *Strijk.*

# TITVLVS VII.

## De Jure Codicillorum.

*Junge L. 6. C. t. 36.*

CODICILLUS (*v. 19.*) [1] eſt ultima teſtatio, minus ſolennis, ſine heredis inſtitutione directa, de eo quod quis poſt mortem ſuam fieri velit, facta. D

Sunt vel ſcripti, vel nuncupativi, *3. C. de bon. libert. ſ. in ſ. C. h. ab inteſtato,* [2] qui per ſe ſubſiſtunt, 16. vel cum teſtamento, qui ſunt *ſequela* [3] †
teſtamenti illius *ante vel poſt facti* [4] 16. 3. §. ſ.

Cauſa efficiens eſt, Jus civ. *pr. I. h.* Voluntas codicillos conficiendi, *l. 13. §. 1. h. ſ. §. 1. C. h. 29. qui teſt. fac. 76. ad SCt. Trebell.* ejus, qui *teſtari poteſt* [5] *6. §. 3. l. §. 2. h.* an verò quis voluerit teſtamentum, aut codicillum facere, judex *cognoſcit,* [6] *13. §. 1.* C

A SOLENNITATES * ſcriptorum ſunt (1.) præſentia *V. teſtium,* [7] *ſ. §. ſ. C. h.* (2.) Unitas actus, (3.) Subſcriptio teſtium, *ſ. C. h.* non etiam rogatio & *ſignatura:* [8] *§. ſ. I. Carpz. 2. dec. 152.* * Nuncupativorum ſunt (1.) præſentia V. teſtium, & (2) unitas actus, *ſ. in fin. C. h. R. I. de an. 1512. tit.* von den Teſtam. niſi fiant coram *aliis* [9] *19. C. de teſt.* aut roget teſtator *heredem ſuum* [10] ut hereditatem, vel certam rem huic vel illi reſtituat, tunc enim ejuſmodi fideicommiſſarius etiam abſque omni teſte, poteſt heredi *deferre juramentum,* [11] quò afferat, nihil à ſe rogatum eſſe: *ſ. C. de fideicom.* modò prius de calumnia juret. *§. Carpz. 2. dec. 40. vid. Carpz. 2. d. 41.* Teſtes hic non eſſe poſſunt *Legatarii* [12] *Zepper. d. Cod. c. 5. n. 19. Richter. ad L. 22. n. 21. C. de teſtam. Brunn. ad L. 20. n. 9. qui T. fac. p. Reuſn. de Cod. c. 16. n. ult.* Non obſt. 22. *h. C. d. teſt. Diſſ. Carpz. 2. dec. 152. ob. §. 11. I. d. T. O. v. L. 22. C. de teſt.* benè tn. mulieres. *1. pr. de teſtib. 20. §. 6. qui teſt. fac. poſſ. Carpz. d. dec. 152. & 3. c. 1. d. 50. C. I. A. h. th. 15.* ſc. a.

O Si relinquatur Legatum, & fideicommiſſum particulare & *univerſale:* [13] *§. 10. I. de fideic. hered. §. 1. I. h.* In Codicillo teſtamento confirmato poteſt tutor dari.

*l. 5. pr. d. ſeſt. rur.* Scriptus heres indignus declarari, *4. C. d. his, quib. ut indign.* non etiam directò hereditas dari aut adimi, *§. 2. I. h. vid. 13. §. 1 h. 76 ad SCt. Trebell. 17. §. f. d. cond. teſt. L. 36. pr. d. T. mil.*

E Petitur ſic relictum fideicommiſſum univerſale, officio judicis; particulare, actione *ex teſtamento.* [14]

C Vitiantur propter defectum *ſolennitatis*, [15] *ut ſupr.* Reſolventur * voluntate contrariâ poſteriori, *6. §. 2. L. 14. 16. h. 3 C. h.* * declarata teſtamento, codicillus coram judice, vel *V teſtibus*, [16] *§. 1. I. h. & ibi Vinn. Diſſ. Harpr. ad §. f. I. h. vid. Strauv. h. th. 69.* Et, (ſiquidem teſtamento cohæſerint) *everſo teſtamento,* [17] *14. 16. 3. §. p. & ſ.* B b.

# Clauſula Codicillaris.

D **E**ſt *clauſula* [18] declaratoria ulterioris teſtatoris voluntatis, teſtamento adjecta, ut diſpoſitio, ſi jure directo *non valeat*, [19] fidei commiſſaria ſiat, *11. §. f. de leg. 2. 29. §. 1. de teſt.* Adjicitur ab eo, qui *teſtari poteſt*, [20] *h. §. 3. I. § 2. Carpz. 3. c. 4. d. 28 & 2. d. 113.* Licet *notarius* [21] tantum adjecerit: *Carpz. 6. Reſp. 4. §. arg. 31 §. 20 de Ædil. Edict.* (*Diſſ. Richt. part. 1. d. dec. 61.*) modò a ſ[illegible] verbis vel factô; nam in dubio non præſumitur, *Ca. 6. Reſp. 7.* niſi in teſtamento paterno, *Ca. 2. dec. 113.* aut

E *ad pias cauſas*, [22] *Ca. d. l.* Suſtinet teſtamentum, alias *viciſum*, [23] (modo *requiſita* [24] Codicilli ſint obſervata) in vim fideicommiſſi. *Ca. 6. Reſp. 6. 7. Renſu. de codicill. r. 23. Richt. p. 1. dec. 63. Ca. 3. c. 4. d. 38. 39. & 2. dec. 113.*

## *Notæ variorum.*

(1) [*Ved. 19.*] Notandum ex h. l. quod etiam in ſingulari *Codicillos* dicamus, quod & alibi factum *l. 14. 2 §. C. d. Teſt. l. ult. C. famil. erciſc.* *Bergh.*

*Codicilli unum obſequi teſtamento ſubſiſtunt.*

(2) [*Ab inteſtato*] Quando nullum teſtamentum conditum, ſed de certa parte bonorum tantum diſponitur. *Bergh.*

(3) [*Sequentia.*] Et ſic valeat teſtamento ſubſequenti, eo vero corruente corruunt. *Bergh.*

*Differentia inter Codicillos teſtamento confirmatos & ab inteſtato factos.*

(4) [*Ante vel poſt factis*] Inter hos & eos, qui ab inteſtato fiunt, hoc intereſt, quod relicta in teſtamento confirmatis valeant, jure *directo*: in iis vero qui ab inteſtato facti, tantum jure *fideicommiſſi*. *Bergh.*

*Qui non poteſt teſtari, etiam non poteſt codicillare.*

(5) [*Teſtari poteſt*] Qui ergo teſtari nequit, nec Codicillos condere poteſt. Impubes itaque furioſus banniti &c. quia non poſſunt teſtari, hinc nec Codicillos condere valent, *Brunnem. l. 6. h. tit. 6. Bergh.*

*In dubio clauſula interpretanda*, *ut quam operari poſſit.*

(6) [*Cognoſcit*] Ex circumſtantiis & animi declaratione præcedente. In dubio autem ſemper ita interpretanda, ut valeat in quantum valere poteſt, cum nemo ſtatuatur elegiſſe viam præſumatur, per quam in bona ſua ſubverterentur. *Bergh.*

*Quo teſtibus ad [illegible]*

(7) [*V teſtibus*] Cum enim hic de ejus voluntate, qui jam mortuus eſt, & ipſe mentem ſuam exponere nequit, agatur, ideo ultra numerum alias ad probationem ſufficientem plures requiruntur teſtes, *l. ult. § f. C. d. Codic.* Quo caſu tamen ad teſtamentum minor numerus teſtium requiritur, eo caſu etiam Codicilli coram teſtibus paucioribus condere ſufficit. Quocunque caſu vero ad teſtamentum octo teſtes requiruntur, eo caſu ad Codicillos requiruntur ſex, *Ord. Not. d. a. 1512. tit.* Von Teſtamenten *§ 5. vid. Tr. de J. § d. 2. C. 3. n. 25. Bergh.* Alii etiam ſunt *ſolennes*; Alii *minus ſolennes* qui abſque ſolenni teſtium numero conduntur, veluti tempore peſtis, ad pias cauſas, in his idem circa teſtium habilitatem & numerum, quod in teſtamentis minus ſolennibus deſideratur. *a l. 15. ff. d. donat. mort. cauſ. l. 21. ff. d. R. J. Dec. El. 46. Carpzov. p. 3. c. 4. d. 3. 14. Dec. 150.* Sæpe manet etiam Codicilli *ipſo jure l. 29. C. de teſtam.* & alia ratione Codicilli, in quibus *V. teſtes* ſunt neceſſarii, ob præcludendam fraudi viam & neceſſitatem obſervant eandem, quam in teſtamentis ceterum formatur *per l. §. C. qui teſt. fac. R. J. d. A. 1512.* Von Teſtamenten *§ 11. Carpz. p. 3. c. 6. d. 5. Diſſ. Strauv. t. J. C. Ex. 34. th. 57. Mevius.*

*Non § teſtes requiruntur in codicillo ſubſcribentes.*

(8) [*Signatura*] Prætor ſolis ſignaculis contentus, & bonorum poſſeſſionem concedit, ſi VII ſignatoribus, etiamſi deficiat ſubſcriptio, *vid. tafe. 1. d. bon. poſſ. ſec. Tabb.* Signatura etiam in teſtamento eſt

*Codicilli alii ſunt ſolennes, alii minus ſolennes.*

[illegible]

[illegible]

DE CLAUSULA CODICILLARI

[illegible]

[illegible]

[illegible]

# LIB. XXX. XXXI. XXXII.

## De Legatis & Fideicommiſſis.

### *Junge L. 6. C. t. 37. 42. 43. 47. 48.*

A LEGATUM (*[illegible] de V. S.*) ſtrictè §. 1. I. h. pro ^a^ re legata, eſt Donatio quædam, verbis directis, à defuncto facta, ab herede præſtanda. [*[illegible]*] H D

B pro ^b^ ipſa ultima voluntate, eſt ultima conteſtatio, qua alicui res titulô particulari, ^c^ verbis directis relinquitur. Olim erant quadruplicis generis §. 2. I. h. *Ulp. tit. 24. §. 1. & ſeqq.* hodie una omnium eſt natura ^(d)^ §. 3. I. *[illegible]* C. h. Fiunt voluntate ejus, ^(e)^ qui teſtamentum facere poteſt. *[illegible] de leg. 1. §. 1. de leg. 3.* declarata ro- D † C

[illegible]

[illegible] [illegible] codicillis, [illegible] ab inteſtato [illegible]

Relinquuntur * civibus, qui habent teſtamenti factionem [illegible] (tempore conditi teſtamenti, & legantis morte, [illegible]) etiam [illegible] [illegible] perſonis [illegible] [illegible] modo [illegible] [illegible] Juſtin. [illegible] Univerſitati relictum, ſingulis non debetur [illegible] [illegible] Pauperibus ſimpliciter relictum, debetur, illis qui ſunt, ubi legans domicilium habuit, [illegible] poteſt tamen judicis arbitrio [illegible] [illegible] [illegible] [illegible] Annua quantitas, [illegible] relicta, debetur pauperrimis: [illegible] Pauperibus cognatis relictum, debetur illis, qui nec immobilia, nec [illegible] poſſident, [illegible] [illegible] Modo ex poſt facto appareat, cui praeſtari debeat, nam alias eſt ipſo jure nullum [illegible] error [illegible] nihil vitiat. [illegible]

* [illegible] aliis, qui teſtamenti factionem paſſivam non habent, propter cauſam [illegible] [illegible]

Ab heredibus teſtamentariis, [illegible] Novo jure omnibus illis, ad quos aliquid perveniat ex morte legantis, [illegible] heredibus heredis [illegible] (Quae ab inteſtato legantur, legata cenſentur, etiam a [illegible] niſi contraria teſtatoris voluntas appareat: [illegible]) A legatario & fideicommiſſario, donatario mortis cauſa, [illegible] ab heredibus ab inteſtato, [illegible] a bonorum poſſeſſore: [illegible] NON etiam ab eo, qui non eſt [illegible] ut etiam a filio tunc filio exheredato. [illegible]

[illegible] niſi [illegible] Si legata res, quae * non eſt in rerum natura, neque actu, neque potentia, tum nec aeſtimatio debetur. [illegible]

* eſt in rerum natura, ſed * ſpe tantum, valet, [illegible] Et Legatum purum eſt, quoad [illegible] quoad obligationem vero [illegible] eſt. [illegible] Si tamen [illegible] [illegible] quod tantum ſit adjectum, tum totum debetur, licet [illegible] nihil [illegible] [illegible]

* ipſo actu, * ſed extra commercium * ſimpliciter, tum etiam [illegible] debetur: [illegible] * Certo tamen reſpectu ſeu reſpectu * [illegible] tum debetur res, vel ejus aeſtimatio: [illegible] * [illegible] tum aeſtimatio debetur [illegible] Sic legari poteſt Feudum, ſc. ad eum effectum, ut aeſtimatio debeatur [illegible]

*de leg. 1. lit. F.* (*Diſſ. Schultz. Finckelth. controv. 4. th. 7. propter. 1. F. n.* [38] *L. 40. § f. de leg. 1.*)

H Res legenda, quam teſtator

* talem ſcivit, & tum præſtatur tantum dubius eventus, ſumtibus heredis. *N. 112. c. 1.* (*vid. 3. f. C. de leg.*) cui tamen legatarius aſſiſtere poteſt, *N. 112. c. 1.* ipſe autem Legatarius cauſam ſuſcipere non poteſt, * *propter 35* [39] *de Leg. 1. Cu. 6. Reſp. 20. n. 10. 12.* Si verò res heredi adjudicatur, tum ſtatim ipſo jure Legatario acquiritur,

h & retrotrahitur tempus ad mortem legantis. *Nov. 112. c. 1.*

i * Credidit * alienam, tum ſive vicerit heres, ſive victus fuerit, æſtimatio, aut

k ipſa res debetur. *§. 11. I. h.*

e * ſuam, tum res dependet ab eventu, & ſiquidem heres eam vice-

K rit, Legatario cedit, non vero, ſi victus. *per d. N. 112. c. 1.* * Et in commercio, quæ ſi eſt * teſtatoris, tum legatum ſubſiſtit, etiamſi *alienam crediderit*, [39] *67. § 8. de leg. 2.* aut legatarii *§. 10. 11. I. h. vid. tamen d. §. 10.* Si res cum aliis communis, aut in qua teſtator tantum habuit utile dominium, legata, tum in dubio tantum valetur ad legatum, quod *teſtator habet* * *Bach. ad § 4. I. h. arg. 67. § 5. de leg. 2. & 31. § 4. de leg. 3. 71. § f. de leg.* (*Diſſ. Accurſ.*) *14 pr. de leg. 1.* Si vero poſteà totam acquirerit teſtator, tota debetur: *6 pr. de leg. 1.* Si legata ſit res teſtatoris oppignorata, valet legatum, *57. de leg. 1.* & luere eam debet heres, ſi teſtator ſciverit,

h legatarius vero teſtator ignoraverit: *57. de leg. 1.* *Lauterb.* [39] tamen ex *dicta Leg. 57. de*

L *Leg. 1.* * aliena, * & apud hoſtem, ac * aliquando fuit noſtra, &

M habet poſtliminium, tum Legatum valet *9. 98. de leg. 1.* * nunquam fuit noſtra, nec

m commercio comparari poteſt, ut fundus hoſtium, tum non valet. *103. de V. O.* va-

l let tamen, *ſi commercio comparari poſſit.* (40) *104. §. 2. d. leg. 1.*

N * ſed in imperio & commercio noſtro, tum eſt vel perſonæ * *Oneratæ*, [41] & legatum omnino valet. *§ 4. I.* licet teſtator eam ſuam

n putaverit. *67. § 8. de leg. 2.* (*Diſſ. Ca pz.* [42] *lib. 6. Reſp. 28 num. 5*)

* Honoratæ jam ante propria, & tum regulariter *nec æſtimatio* [43] debetur, *§. 10. I. 5. §. 4. de A. v. A. P. 15. C. h.* licet legatarius eam poſtea alienet, *propter regul. Caton.* [44] *Limitatur* [45] tamen (1.) ſi res *revocabiliter* [46] tantum pertinet ad legatarium. *82. § 1. de Leg. 1. 22. de A. v. A. P.* (2.) ſi tertius etiam jus in ea re habet eam enim heres liberare tenetur: *86. de leg. 1. 71. § 5. 69. § f. de leg. 1.* nec poteſt aliena ſua *propria perſona legari* [47] *65. §. f. de leg. 1. 15 de capt. & poſtlim. revers.* Si poſt teſtamentum factum, res demum comparata titulo oneroſo, tum *æſtimatio debetur*, [48] *§ 6. I. h.* n

Sin lucrativo tum *nihil debetur* [49] *d. § 6. I. h.* * Tertii, tum ſi * ſcivit teſtator, eſſe alienam, valet Legatum, ut heres eam comparet, vel æſtimationem præſtet *§. 4. I. 10. § f. de leg. 3. 71. § 3. de leg. 1.* * ignoravit teſtator, eſſe alienam, tum nec *æſtimatio debetur*, [50] *§ 4. I. h. propter. 67. §. 8 de leg. 2.* niſi cognato [51] ſit legata *10. C. h. Ca. 6 Reſp. 20.* Probat hic legatarius *ſi contrarium.* [52] *§. 4. I. h. 21. de prob.*

Legari poteſt * res (1) corporalis & incorporalis. *§ 21. I. h. 41. de Leg. 1.* *Legato nomen* [53] liberatur heres, cedendo actiones, licet *inefficaces.* [54] *44. § 6 75 §. 2. 105. de leg. 1. 18. § 8 de leg. 3.* Legatarius enim ante ceſſionem habet tantum ex facto D. Pii *utiles actiones* [55] *18. C. de Legat.* (2.) Res in ſpecie & genere, modo habeant certam determinationem, natura *13. 37 de Leg. 1. § 22 I. h.* vel ab homine, & teſtator ejuſmodi res, e. g. ædes, *habeat.* [56] *71 pr. de leg. 1.* quod Vinnius etiam ad fundum extendit, *arg. 71. de leg. 1. conſ. 24 § 3 eodem.* Sed communiter DD. aliter ſentiunt, propter ſummum fundi *incertitudinem.* (57) *69 pr. de V. S. 40. §. 4 de jur. dot.* Le- O

gato

gato genere legatarius eligit, (niſi aliud voluerit teſtator: §. 22. I. h. 2. §. 1. *de opt. leg.* quod præſumitur, ſi verba ad heredem direxerit, quod fit in legato damnationis & *ſinendi modo.* [61] 41. §. 3. *de leg.* 2.) ita tamen, ut nec optimum, *nec peſſimum* [62] eligat. *arg.* 67. §. 2. *de leg.* 2. 37 *de leg.* 1. & *ibi eadem.* Quantitate in genere legatâ, electio eſt heredis: 4. *de trit. vin. ol. vid. Ca. dec.* 303. (3.) Res ſingularis & *univerſalis* [63] e. g. certa bonorum vel *hereditatis pars.* [64] 23. 26. §. 2. *de leg.* 1. 8. §. *f.* 9. *de leg.* 2. 22. §. *f. ad SC. Trebell.* 30. *pr. de V. & P. S.* hoc in caſu interveniunt ſtipulationes in hunc legatarium & heredem, de lucro & damno *communicando*, [65] *vid.* §. 5. 6. *I. de ſ. leir. hered.* atque eligit heres, an dividere velit hereditatem, an verò æſtimationem partis præſtare, modo diviſionem commode recipiat; alias enim præciſe ad æſtimationem obligatur. 26. §. 2. *de leg.* 1. * *ex facto*, [66] §. 21. 7. Licitum.

E *Effectus* * *proximus* [67] eſt, ſi legatum * ſimpliciter eſt * factum: quod heres, ſi velit, poſſit intereſſe præſtare: 13. §. *f. de re jud.* * Res * futura; quod ſuſpendatur obligatio, donec res naſcatur 1. §. *f. de condit. & demonſtr. vid. ſupr. lit. O.* * præſens, & quidem ſi * quantitas aut genus. tum legatario tantùm jus *ad rem* [67] acquiritur. Si * certa ſpecies * aliena, tum heres tenetur rem vel æſtimationem præſtare. 30. *de leg.* 2. * propria, tum ipſo jure *tranſit* [68] in legatarium, ſi *jus in re* [69] legatum, tum hoc tranſit: Si *jus ad rem* [69] legatum, tum heres obligatur *ad actionem cedendam*, [69] 18. C. *de legat.* Legatarius etiam tacita hypotheca competit. [70] 1. C. *comm. de leg.* * ſub *conditione*, [71] modò, die &c. ſit relictum, *de eo vid. ſupr. ad tit. de condit. & demonſtr.* * ſecundus *ſunt actiones*, [72] quibus *poſſeſſio* [73] legati petitur: *vid.* 1. § 1. *quod legat. Carpz.* 3. c. 13. *d.* ...

R ut ſunt * (1.) Actio in rem, ſc. ſi *legatum eſt jus in re.* [74] nam illud jus Legatario, etiam ignoranti, ſtatim acquiritur. 77. §. 3. *de leg.* 2. in momento mortis domini, 80. *de leg.* 2. 64. *de furt.* 9. §. 5. *de pecul.* ſc. quoad *tranſmiſſionem*, [75] veritate enim demum acquiritur aditâ *hereditate* [76] 86. §. 2. *de leg.* 1. 44. §. 1. *de leg.* 1. quod ſi illam rem repudiat, videtur nunquam *dominus fuiſſe* [77] 44. §. 1. *de leg.* 1. *vid.* 15. *de reb. dub.* Partem accipere, partem repudiare non poteſt, 38. *pr. de de leg.* 1. 4. *de leg.* 2. unam rem tamen agnoſcere, *alteram repudiare* [78] poteſt. 5. *pr. de leg.* 2. *Limita* [79] tamen *ex* 5. & 6. *de leg.* 2. &c.

S. * (2.) Actio *quaſi Serviana*, [79] quæ conceſſa eſt in ſecuritatem legati, in reliquis defuncti bonis 1. C. *communia de legat.* ſc. quæ ſuperſunt *deducto* [80] ære alieno §. *f. I. ad L. Falcid.* 5. §. 5. C. *de jur. delib.* &c.

T. * (3.) Actio *ex teſtamento*, [81] 2. §. 3. *de leg.* 3. quæ eſt perſonalis, legatariis D adverſus heredes vel alias perſonas oneratas, ad legata *jure obligationis* [82] conſequenda competens: Eſt *ſtricti juris*, [83] *arg.* 5. *junct.* 7. *de eo, quod cert. loc.* participat N tamen de actionibus b. f. quoad fructus & uſuras &c. 34. *de uſur.* Oritur ex agnitione voluntatis a perſona onerata facta. *arg. L. un.* §. 4. C. *de caduc. toll.* §. 5. *I. de obl. quæ quaſi ex contract.* Datur Legatariis, & *novo jure*, [85] fideicommiſſariis particularibus, & heredibus. 1. C. *communia de legat.* Contra heredes, aliaſque perſonas oneratas, & heredes *ſingulos*, *pro rata*, [86] 44. *de leg.* 2. niſi alias partes *teſtator aſſignavit.* [87] 124. *de leg.* 1. *Bach. V.* 2. *D.* 11. *Ad* * *res legatas*, [88] cum ſuis *acceſſionibus* [89] 1. *pr.* 44. §. 2. *de leg.* 1. 10. *de leg.* 2. 16. *d. leg.* 3. *vid.* 91. §. 5. *de leg.* 3. *Rickl.* 1. *dec.* 7. *n.* 20. *Alexo lib.* 4. *præſumt.* 129. *n.* 11. §. 10. *I. h.* (ſic ædificium etiam debetur, in area legata extructum, 39. *de leg.* 2. 44. §. 4. *de leg.* 1. *Limita* [90] tamen ex eadem 44. §. 4. (*Obſ.* 21. §. 2. *de leg.* 1. 79.

 §. 2.

*§. 2. d. leg. 3.) vid. Donell. in Comm. lib. 8. c. 17. de legat. Duar. ad L. 8 de leg. 1.* uſuris & fructibus, ſc. ex tempore *moræ,* [97] *39. de leg. 1. 91. §. 2. de leg. 2. 26. de leg. 3. 3. pr. de uſur. non motivis,* [98] *ſ. C. d. uſur. & fruct. legat. (obſt. 42.* [99] *de uſur. 40. de A. R. D.)* etiam percipiendis. [94] *38. §. 1. de leg. 1.* Ac præſtandus hic legatario *dolus & culpa,* [95] *1. C. communia de legat.* poſt moram, etiam leviſſima: *47. §. 4. 108. §. 12. de leg. 1. Vid. Struv. ex 33. §. 41. Lamina* [96] tamen *ex 108. §. 12. de leg. 1.* non etiam caſus fortuitus, *niſi genus aut quantitas* [97] legata, *30. §. 3. ad L. Falcid. 11. C. ſi cert. pet.* aut mora *caſum præceſſerit* [98] *26. de leg. 3. 47. §. ſ. de leg. 1.* Rei parte peremta, reliquum debetur, *82. 88. 29. de leg. 1. 72. de leg. 3.* niſi principale perierit, ac ſupererit tantum *acceſſorium,* [99] *2. de peccul. legat.* SS

* *Et pœnam* [100] quo in caſu fit mixta, & S datur in duplum, quod rem & pœnam continet, in caſu. *§. 26. I. de act. §. 7. I. de obl. quæ quaſi ex contract.* Hæc perſonalis cum reali concurrit *electivè* [101] *76. §. 8. de leg. 2. 84. §. ſ. de leg. 1.* cum hypothecaria *alternativè* [102] *Myſ. c. 4. O. 38.* plura vide *ap. Bach. V. 2. D. 15. th. 7.*

* (4.) Remedium L. ſ. C. de Edict. D. Hadrian. toll. modò jus Legatorum ſit *liquidum* [103] & non adſit legitimus contradictor. *d. L. ſ. Finckelth. obſerv. pract. 121. Carpz. 3. c. 13. d. 35. Fr. Ex. 7. q. 2 & ibi Fibiq. Bach. V. 2. D. 15. th. 7. lit. D. Myſ. c. 7. O. 61.* r.

# Jus adcreſcendi, Anwachſungs-Recht.

Eſt *jus,* [104] quo portio *vacans* [105] adjicitur & accreſcit conjuncto, qui partem ſuam agnovit, ad conſervandam hereditatis *individuitatem* [106] & teſtatoris voluntatem. *Sarmus de jur. accreſcendi. c. 4.* Alia eſt accretio, *de qua ad tit. de uſufr. accreſc.*

C Introductum eſt quoad * Hereditates, ob individuitatem hereditatis, ſecundum quam defunctus & hæres eadem perſona videntur: nemo igitur poteſt *partim teſtari,* [107] partim non, ſic nemo partim heres eſſe, licet ab inteſtato. T

* Legata, ob *voluntatem teſtatoris,* [108] qui plures ſimul ad eandem rem vocavit. *33. pr. de leg. 1. 4. 33. de leg. 2.* & eos potius ſibi invicem, quàm heredem ſuccedere volunt. *61. in ſ. de leg. 2.* Si duo pluresve *ab uno,* [109] *16. quib. mod. uſufr. fin.* ad eandem rem, *34. §. 9. de leg. 1. 1. pr. de uſufr. accreſc.* vocantur,

U quod dicitur *CONJUNCTIO,* [110] & fit a Lege, in hereditatibus, *Cr. 3. c. 2. d. 17.* vel a teſtatore, *Carp. 3. c. 2. d. 13.* * Idque vel (1.) verbis tantum, quando *uno verbo* [111] plures vocantur ad eandem rem, æquis portionibus, (quas habent *ex voto teſtatoris,* [112] ſi concurrant,) (α.) Titio & Cajo fundum Tuſculanum do lego, æquis partibus, & *his quoque accreſcit* [113] *§. 8. I. de leg. juncl. L. 142. de V. S. 89. de leg. 3.* (β.) *16. §. ſ. de leg. 1. juncl. 142. de V. S.* (γ.) *89. de leg. 3. §. Cr. 3. c. 2. d. 14. 15. Hahn. de uſufr. accreſc.* (*Diſſ. Crelſchner de Jur. accreſc. cap. 9. propter §. 8. I. de leg. 3. pen. de uſufr. accreſc. 89. de leg. 3.*) *Crelſchner. de jur. accreſc. c. 13. Bach. V. 2. D. 15. th. 3. Vinn. ad §. 8. I. de leg.*

u * (2.) Re tantum, quando plures diverſa oratione ad unam rem ſimpliciter & in ſolidum vocantur. e. g. Titio fundum Tuſculanum do lego, Cajo eundem do lego: Hi plerumque vocantur *disjuncti,* [114] & his *quoque accreſcit:* [115] *Fr. Ex. 7. q. 9 Cz. 3. c. 2. d. 14. n. 1.*

u * (3.) Mixtim, qui ad eandem rem in ſolidum unâ oratione vocantur: e. gr. Titio & Cajo fundum Tuſculanum do lego *89. de leg. 3. 142. de V. S.* his extra controverſiam accreſcunt partes aliæ.

Ratio-

*Ratione prelationis ehſervo* (18) Teſtator, *ita ſcripſit* (19) T. & S. heredes ſunto: C. heres eſto M. heres eſto: D. & P. heredes ſunto ex æquis partibus, jam deficiente T. pars accreſcit ſoli S. deficiente C. omnibus: deficiente D. accreſcit ſoli P. *10. de leg. 3. Ritm. de jur. accreſc. c. ſ.*

O Accreſcit portio vacans hereditatis, legati, fideicommiſſi, & mortis cauſa donationis, modò *nondum agnita ſit*, (20) *1. §. 3. de uſufr. accreſc.* Portioni agnitæ hereditatis, (legitimæ & teſtam. *9. de ſuis & legit.* civilis & prætoriæ, *4. de B. P.* quod jus etiam in heredes tranſit, *9. de ſuis & legit.*) Legati & fideicommiſſi, *§ 1. I. de Legat.* mortis cauſa donationis. *ſ. C. de m. c. donat. §. 1. I. de donat. L. un. §. 14. C. de caduc. toll. Carpz. 3. c. 2. d. 16. num. 1. Schwanemburg. tr. de jur. accreſc. c. 8. p. 10.* [*Diff. Faber* (21) *de error. pragmat. decad. 45. error. 10.*] Ad contractus hoc jus *non pertinet.* (22) *un. de V. O. §. Carpz. 3. c. 2. d. 16. Schwanemburg. d. l.*

E Adjungitur res noſtræ rei, ipſo jure, etiam ignorantibus & *invitis* (23) *30. pr. de A. vel O. H. 31. 33. §. 1. 35. eodem. L. un. §. 10. C. de caduc. toll.* Pluribus acquiritur pro portione hereditaria, *L. un. §. 10. C. de caduc. toll. Et quidem hereditas,* (24) ac pars mixtim (25) conjunctis, *cum onere:* (26) re vero tantum conjunctis, *abſque onere.* (27) *L. un. §. 11. C. de caduc. toll. Vid. Fibig. ad Pr. Exerc. 7. q. 2.*

## Notæ variorum.

(1) [*Lege*] Sc. quatenus ſe [illegible] ſe [illegible] & [illegible] complectitur. *Berger.*

(2) [*Obſt. 64*] Hic dicitur, quod legatum [illegible] ad legatarium tranſeat. Sc. hoc ita, quod [illegible] non quoad effectum privatæ occupationis, debet enim legatum accipere ex manu heredis. *Berger.* Vel ſc. Loquitur de dominio rei legatæ. [illegible] *l. 23. d. leg. 2.* [illegible] Per accidens [illegible] ut legata [illegible] ab ipſo teſtatore præſtari ſoleant. Accedit, quod legatum, ut ab ipſo teſtatore præſtitum, non tam quà legatum, quam quà donatio [illegible] *Berger.*

(3) [*Particulare*] Non enim nomen, quod ex teſtamento capit, [illegible] capit, ſed [illegible] quod capit, ut heres. *Berger.*

(4) [*Natura*, Sc. quoad effectum [illegible] competentem. Quatenus quoad [illegible] actione differt [illegible] ad heredem, [illegible] ad legatarium [illegible] *l. 10. ff. d. leg. 2. l. 45. § 2* [illegible] *Berger.* [illegible] legatorum [illegible] teſtamento [illegible] *Mehorius prol.* [illegible] *19* [illegible] *39 § 79.* Hoc vero propter [illegible] *Carpz.* [illegible] *Menchen.*

(5) [*Poteſtate quo*] Neque enim [illegible] ſibi [illegible] legatum poteſt. *l. 7. § 1. ff. d. reb. dub. l. 46. ff. d. ſolut.* [illegible] *ff. l. 30 § 28* [illegible] *35 ob. 98. Menchen.*

(6) [*Jure nova*] [illegible] legata fideicommiſſis [illegible] *Berger.*

(7) [*Epiſtola*] [illegible] Hinc non dubitandum, quod [illegible] legatum [illegible] codicillaris. *Berger.*

(8) [*Teſtamento*] [illegible] ad capiendum aliquid ex teſtamento, [illegible] *Berger.* [illegible] tempore conditi teſtamenti & mortis teſtatoris, [illegible] *l. 1. ff. de Reg. Cat. l. 49. § 1. ff. d. her. inſtit.* [illegible] *l. 26. ff. d. condit.* [illegible] *l. 124. ff. d. condit.* & [illegible] *Menchen.*

(9) [*Singulas*] Non *Collegio*, vel *Univerſitati Judæorum*, [illegible] *l. 1. C. d. Jud.* Nam *Judæi* [illegible] *Collegia. Berger.* Ad *Obſt. l. 3. C.* [illegible] Loquitur de Collegio Judæorum, [illegible] *Univerſitate Judæorum* [illegible] *Collegium* [illegible] *Berger.*

(10) [*Non debetur*] Unde legatum Miniſterio Eccleſiaſtico [illegible] à [illegible]

[illegible]

(11) [illegible]

(12) [illegible]

(13) [illegible]

(14) [illegible]

(15) [illegible]

(16) [illegible]

(17) [illegible]

(18) [illegible]

(19) [illegible]

(20) [illegible]

(21) [illegible]

(22) [illegible]

(23) [illegible]

24 [illegible]

(25) [illegible]

26 [illegible]

(27) [illegible]

[illegible]

[illegible]

[illegible]

(34) [illegible]

(35) [illegible] Ergo.

36 [illegible] Ergo.

(37) [illegible] Ergo.

(38) [illegible] Ergo.

(39) [illegible] Ergo.

(40) [illegible] Ergo.

(41) [illegible] Ergo.

[illegible]

(42) [illegible] Ergo.

(43) [illegible] Ergo.

(44) [illegible] Ergo.

(45) [illegible]

46 [illegible] Ergo.

(47) [illegible] Ergo.

(48) [illegible] Ergo.

(49) [illegible] Ergo.

(50) [illegible] Ergo.

(51) [illegible] Ergo.

(52) [illegible] Ergo.

(53) [illegible] Ergo.

(54) [illegible] Ergo.

(55) [illegible]

[illegible]

[illegible]

[illegible]

(65) [illegible]

(66) [illegible]

(67) [illegible]

(68) [illegible]

(69) [illegible]

(70) [illegible]

(71) [illegible]

72 [illegible]

(73) [illegible]

(74) [illegible]

(75) [illegible]

76 [illegible]

(77) [illegible]

(78) [illegible]

In pluribus unius lega-ti, una ac-cepta, al-tera repudi-ari poteſt.

(78) [*Alterum repudiare*] Ratio, quia tot le-gata ſunt, quot res. In pluribus verò legatis unum accipere ſat eſt. *Bergt.*

(79) [*Litera*] Niſi una ex his rebus alteram ali-quid etiam adjectum, e. g. Lego *Mævio* domum & hortum hac tamen lege, ut ex horto decem au-reos præſtet Eccleſiæ, vel plures res continet colle-ctivè legata, v. g. ſupellectilem lego, tunc omnia vel acceptanda vel repudianda. *Bergt.*

(80) [*Quaſi hortamur*] Hoc eſt *Hypotheticum*. *Bergt.* Illa verò contra plures legatarios, fi-deicommiſſarios vel heredes non in ſolidum, ſed pro rata contra ſuccedi ſolent, ſicuti perſonalis actio conceditur, *l. 1. C. communia de legat.* *Mevius.*

Quæ pro le-gato compe-tit hypothe-ca, poſt-ponitur o-mnibus aliis creditoribus.

(81) [*Deducto*] Hypotheca enim, quæ pro le-gato competit, poſtponitur omnibus aliis credito-ribus, etiam chirographariis, quia legatum ipſum non debetur, niſi ex bonis defuncti. *Bona enim non intelliguntur, niſi ære alieno deducto.* Nec enim in creditorum præjudicium teſtator legare poteſt. Accedit, quod hypotheca hæc non à tem-pore conditi teſtamenti, ſed morte teſtatoris in-cipiat, ut antequam ſolvenda ſint debita, quæ ipſe vivus contraxit. *Bergt.*

Ex ſolutum aditionis heres ad im-plementum teſtamenti conſtringi-tur.

(82) [*Ex teſtamento*] Subjectum aditione here-ditatis. Nam ipſa aditio eſt illud factum obli-gatorium, quo perſona heredis conſtringitur ad implementum teſtamenti. *Bergt.*

(83) [*Jure obligationis*] Quia ex quaſi contra-ctu aditæ hereditatis deſcendit. Nam heres in te-ſtamento adeunda hereditate approbat omnia in teſtamento ſcripta. *Bergt.*

(84) [*Hereditaria parte*] Quia negotium undiqua-que *Bergt.*

(85) [*Mortis jure*] Id eſt, poſtquam legata fidei-commiſſa acquiſierunt. *Bergt.*

(86) [*Pro rata*] *L. 44. d. leg. 2.* Textus nihil probat, ſed pertinent huc *l. 33. ff. d. Leg. 2. l. 77. d. tamen* quibus tamen obſtant *l. 54. § l. &* *l. 124. de leg. 1.* quarum fi de dua tantum inter ſe pugnare, in adeo tres ſunt in hâc *l.* ... & ſe-cuntur, quæ ſimul non ſolo conciliari poſſunt, ſed tamen ... *d. l. 33. & 77.* ... veritate ... *Huber in poſt. ad ff. d. leg. n. 98.* *Titius*

Voluntas he-redis neque eſt tanto-pere.

(87) [*Teſtator aſſignaverit*] Tamdiu enim æqua-le gravamen inter heredes præſumendum, quan-diu non conſtat, teſtatorem unum pro altero gra-vare voluiſſe. *Bergt.* Itaque ... ex pluribus ... ſolvendo non exiſtente, ... non ... *l. 33. ff. d. Leg. 2.* *Mevius.*

(88) [*Ad res aequales*] Si duo ſint heredes, unus ex *ſemiſſe*, alius ex *undecim unciis*, & ... ſolidum legatum ſit, ... quod ... eandem partem in ſo-lido habebit, ... *l. 34. § 12. de Leg. 2.* ... *Huber d. l. n. 99.* Sed illam deciſionem vo-luntati teſtatoris repugnare ac merito *Ruthalju-* ... eſſe ... non dubito, cum enim alias heredes ſubſtituti, eandem accipiant partem, quam in inſtitutione acceperunt. Cur non etiam legatum ... ſecundum proportionem por-tionum hereditariarum, diſtribuendum eſſe exiſti-mem? Et ſi heredes pro parte hereditaria, aliis ad legata ſolvenda tenentur, cur non etiam ... legata ... ſolvere ... ? Sanè ex eo, quod unumquemque heredem ab altero ... petere debeat, ... non ſequitur, nam ſi ille, qui undecim uncias habe-bat, ſolidum ... legatum, non ... uncias ... præſtaret? Si ... dare poteſt, cur non etiam undecim lega-ti uncias? Sed ... unumquemque heredem obliga-tum ad ſolvendum legatum pro parte hereditaria. Ergò unciarum ... , alter, qui undecim ha-bet, ... præſtabit, ... legata ... conſequatur? Verum in hoc loco ... applicarunt ... ſi plures heredes ... legatum præſtare de-beant, tum ... obligatio ex portione hereditaria ... , ... ſi duo heredes ſint ... aliquid præſtare tenentur, ... ſed ... ad ... obligationem ... portionum hereditariarum ... teſtamento, cum unus-quiſque ... præſtare debeat, quod teſtator ei ... *Titius*

Legati ... ſi de in-crementis pertinet ad legatarium.

(89) [*Acceſſionibus*] unde legati detrimentum & incrementum ad legatarium pertinere di-citur. Contrariorum namque eadem eſt ratio. *Bergt.* ... acceſſione ... *d. l. 91. § 4. 5. ff. d. legat. 3.* ... *Mevius.*

(90) [*Litera*] Niſi ſi de contraria teſtatoris mente ex circumſtantiis appareat. Quæ tamen ... ab *Autore* allegata *Bergt.* Ad ... *l. 79. § pen. de leg. 3.* ... *non ... poteſt.* ... ſed ... teſtatoris voluntatem ... , ... ut legatum debeat ... , ... ſi ... (... legatum pro uno ... , cum conſtet, teſtatorem ſic ... , ... deberi, ... poſſe ... pro ... vel ... *Caſſi* ... *l. 98. § 8.*

[illegible]

[illegible]

[illegible]

[illegible]

Jus accreſcendi. Anwachſungs Recht.

[illegible]

[illegible]

quæ ſi d. re conjunctim, tum nomine in eadem propoſitione deprehenduntur, & ſic omnes ipſi nuptæ [illegible] hæc. Porro verum autem [illegible] [illegible] prope additum [illegible], ut [illegible] [illegible] [illegible], quæ ſunt propoſitione. Quod ſi *[illegible] verbis aut mente conjunctus deſicit*, ipſum portio non [illegible] [illegible] [illegible], ſed et [illegible], quæ in eadem propoſitione per copulam ET conjunctim deprehenduntur, hæc enim [illegible] [illegible] [illegible] eſt, v. Lauterbach. *comp. jur.* [illegible]. [illegible] [illegible] [illegible] hanc [illegible] perſpexit propoſitionem *Iovan. Jureconſ. Rom. Germ. for. lib. 2. Tit. 23. aphor. 19.* add. *[illegible] in anal. Inſt. ad §. 8. J. de Legat.* [illegible] [illegible] [illegible] [illegible] [illegible], dum re conjunctis non [illegible] *accreſcendo*, ſed jus non *decreſcendo* tribuimus, & [illegible] [illegible] [illegible] [illegible]. ſed in verbis [illegible] [illegible], modo [illegible] conveniunt. Dubium enim, quæ [illegible] poſſent contra hanc noſtram doctrinam [illegible] ex fundamento addito reſpondere poterit. Quæritur autem [illegible] [illegible]. *[illegible], [illegible] portio deficiente, [illegible] [illegible] [illegible] [illegible] tempore.* [illegible] [illegible], [illegible] [illegible] hanc adſcriptum expectare, vel legatum ipſi impoſitum præſtare) *[illegible]*? Reſponſio ex Regula [illegible] addita deſumenda. Si deficit verbis aut mente conjunctus, collegatarius enim ſine [illegible] [illegible] [illegible], qui eſt in eadem propoſitione, ſi [illegible] [illegible] conjunctio deficiente, v. *L. un. §. 11. C. de caduc. toll. Laud. [illegible].*

Sola opt[illegible] [illegible], [illegible] [illegible].

(118) [*[illegible] agnita ſit*] [illegible] [illegible] agnita ſola, non [illegible] jus accreſcendi, etiamſi [illegible] [illegible], [illegible] decedat, ſed [illegible] portio agnita ad [illegible] heredes devolvitur. Exceptio eſt in *uſufructu*, de quo ſupra *tit. de uſufructu adcreſc. poſt conceſſum* [illegible]. Quod ſi quis, poſtquam acceperit, repudiet, [illegible] eſt, ac ſi [illegible] pro derelicto haberet, & hanc [illegible] [illegible]. *Brunn.*

(119) [*Deficiente Fabio*] Quippe qui decit, [illegible] [illegible] non [illegible] [illegible] in [illegible] [illegible] [illegible], ſed pro conditione [illegible] [illegible] in legatis. *Brunn.*

Obtinet [illegible] [illegible] [illegible].

(120) [*Non poterunt*] Quia hic quoque ſibi [illegible] conſulere poteſt in quemcunque eventum, quod ſi non fecerit, ſibi imputet. Aliud in *ab[illegible] voluntatibus*, quæ [illegible] [illegible] [illegible] [illegible]. Exceptionem quidem formant in re [illegible] à principe donata, per *l. un. C. de [illegible] [illegible] [illegible] ſine hered. dec.* Verum de [illegible] non [illegible] accreſcendi [illegible] [illegible] [illegible], ſed ex ſpeciali proviſione legis, ac latiori interpretatione beneficii rerum *Principis* ſe fundantis. Quapropter & in donatione *Principis* hoc ſingulare eſt, quod [illegible] utrique acceperunt, & alter ſine herede deceſſerit, ſuperſtitibus [illegible]. [illegible] [illegible] [illegible] [illegible] [illegible] [illegible], quam ſuccedendi [illegible], quod etiamſi [illegible] acceperunt donationem Principis, [illegible] poſtea ſine herede deceſſerit, alter ipſi ſuccedat. *Brunn.*

(121) [*Et certantes*] Sc. inter coheredes, non inter Collegatarios. *Brunn.* Hoc verum eſt quoad Coheredes, [illegible] [illegible], in hypotheſi [illegible] [illegible], quæ [illegible] pro parte [illegible] [illegible] [illegible] deſerere poteſt, accreſcens accedat, adeò ut [illegible] [illegible] partem habere debeant. Sed *legatarius* per [illegible], quæ alias accreviſſet, repudiare [illegible], [illegible] [illegible] [illegible], ad [illegible] [illegible] acceptatione vel [illegible], accreſcit. *Tunc Collegatarius compellitur*, non [illegible] [illegible], [illegible] (ſive re tantum conjunctis) [illegible] [illegible], quæ ipſis [illegible] [illegible] ab [illegible] [illegible] [illegible] *d. l. un. §. 11. Coheredibus* [illegible] [illegible] *d. l. un. §. 10. de caduc. toll. Mont[illegible].*

(122) [*Et quidem heredibus*] An onus ſimul accreſcat, [illegible] [illegible] quæſtio eſt, quam hic [illegible] [illegible] [illegible] [illegible] [illegible] interpretandi [illegible], [illegible], ac ſic [illegible] [illegible] [illegible] [illegible], ſi [illegible] legat. Et quidem heredibus ſemper cum onere *d. l. un. § 10.* ac in legatis, [illegible] [illegible] [illegible] [illegible], conjunctis cum onere, re vero tantum conjunctis, abſque onere [illegible]. *[illegible].*

(123) [*Alterum*] [illegible], *Et verbis* tantum conjunctis. *Brunn.*

(124) [*Cum onere*] Sc. implendi conditionem adſcriptam. Hi enim propter unionem ſermonis pro una perſona habentur. *l. 34. pr. ff. de Legat. 1.* adeoque & cum onere [illegible] [illegible], [illegible] [illegible] [illegible]. *Brunn.*

(125) [*Abſque onere*] Quia hic non ex beneficio [illegible], ſed portio ſua [illegible] ſolidum habet. Quod procedit in legatis, non in hereditate, quia hæc ſemper cum onere accreſcit. *Brunn.* Coheredibus conjunctis & disjunctis cum onere *d. l. un. §. 10.* Collegatariis *disjunctis*, id eſt, re tantum conjunctis ſine onere *d. l. un. §. 11.* quia pro indiviſo eam [illegible] non habebant, nec [illegible] [illegible] *d. §. [illegible] ad Lam. §. 10. 11. C. de caduc. toll. Mont[illegible].*

# LIBER XXXIII.

## *TITULUS I.*

## De annuis legat. & fideicommiſſ.

D

Annuum Legatum [1] eſt Legatum, in ſingulos annos relictum: (e.g. heres meus Titiæ, donec nubat, 100. dato.) *Licet vox annua* [2] non fuerit adjecta: & *ſingulis annis debetur*, [3] [illegible] *pr.* primo purè, in futuris *conditionaliter* [4] [illegible] *h.* nam *plura* [5] ſunt Legata [illegible]. Morte Legatarii extinguuntur: *l. pr.* non etiam *capitis diminutione* [6] [illegible] 8. Reipubl. relictum, nunquam *finitur* [7] [illegible] primi anni legatum ab initio ſtatim *tranſmittitur*. [8] [illegible] *h.*

Aliud eſt, ſi certa ſumma legata, & ejus ſolutio in *diverſa tempora* [9] collata: nam tum Legatum purum eſt: *& unum*, [10] ac in heredes tranſmittitur. *20. quando dies leg.* Hoc in dubio non præſumitur. *l. h.*

Aliud etiam eſt in ſtipulatione & conventione annua, quæ pura & *perpetua* [11] eſt *16. §. 1. de V O.*

*Notæ variorum.*

(1) [*Annuum Legatum*] In toto hoc libro nihil aliud fere, quam quæſtiones voluntatis [illegible], cum eorum quæ vel *diverſo modo*, [illegible] ut ex capitibus [illegible] vel *diverſæ* [illegible], ut in [illegible] 2 3 4 6 7 8 9 1[illegible] [illegible], omnibus illis [illegible] de voluntate legantis [illegible] quæſtiones ſunt, quæ [illegible] interpretandi [illegible] [illegible] debent [illegible] *pares Gentium* [illegible] *per Gentes* [illegible] [illegible] certam definit, ſed & aliquando à [illegible] rationandi fundamento, tunc [illegible] *Titius* [illegible] quod in Menſes [illegible], [illegible] appellant *a l. 7 §. f. de præſcript. 3[illegible] vel 40 ann. Menoquo*

(2) [*Licet vox annua*] [illegible] enim vel *Expreſſe*, cum quid in ſingulos annos [illegible] [illegible] *l. 4. ff. h.* vel *Tacite*, cum annorum mentio non ſit, eadem tamen legando [illegible], e. g. Heres Cajo donec nubat quinquaginta dato *l. 17 h. Menoquo*

(3) [*Singulis annis debetur*] Nimirum initio cujusvis anni, [illegible] cedit & debetur, *l. 5 ff h. l. 12. § 1 4 ff quand. dies legat. Sand. lib. 4. t. 4 d 8* [illegible] ſolutionis terminum [illegible] [illegible] defunctus [illegible]. *Sand. ad ff [illegible] 30 § 64. Menoquo*

(4) [*Conditionaliter*] [illegible] quia legatum annuum ſemper reſpectum habeat ad vitam legatarii, etiamſi non addatur, eſt enim ratione legatum perſonale. *Brunſ.*

(5) [*Plura*] Hinc [illegible] Nam legati dies non una [illegible], ſed ſingulis annis. Quot ergo anni, tot [illegible] & [illegible] non [illegible] aut [illegible], quia quovis anno nova naſcitur actio. Cum ergo ſingulis annis obligatio nova [illegible], ſequitur, ſi per 100 annos [illegible] præſtationes non [illegible] à 29. *annis* [illegible] [illegible], [illegible] [illegible] eſſe falſam, [illegible] *Tr. [illegible] ſect. 3* [illegible] *4 n. 1 2.* In [illegible] tamen tota obligatio non præſcriptione perimitur, *C [illegible] 2 p 2 Brunſ.* Hinc [illegible] præſcriptio, ſed quæritur [illegible] *annua legata una præſcriptione tollantur? An potius ad quamlibet annuam præſtationem propria requiratur præſcriptio* [illegible], *ſi debitor non interpellatus 36 annis ceſſaverit* [illegible], *tantum 6 annorum* [illegible]. *Sic præſ*[illegible] [illegible] *compenſ.* [illegible] AE. poſtea [illegible] *l. 7 § [illegible] C. de præſcript. 30. vel 40 ann.* [illegible] *ab* [illegible] *anni vel menſis vel alterius ſingularis temporis.* [illegible] vero *Rebuffus ad Tract. vol. 2. D 22 lit. F.* [illegible] *D* [illegible] *ad* [illegible] *§ 3.* [illegible], [illegible] [illegible] tempora præſcriptionum computanda, non ab initio obligationis, ut alias fieri ſolet, ſed ab eo anno vel menſe quo præſtatio ſolvi deſiit & facta eſt prima ceſſatio, &c. *non ab exordio totius obligationis ſed &c. computare*, præſertim cum addiderit ad *manifeſtum eſſe*, quod dicere vix potuerit, ſi plus ſenſiſſet. At

ergo

*In hoc libro* [illegible] *quæſtiones* [illegible].

*Annuum legatum vel* [illegible] *vel* [illegible].

*Annua legata* [illegible] *debentur*

*Annua legata* [illegible] *ſi legatarius* [illegible].

*Quot ſunt anni, tot ſunt legata.*

*De præſcriptione legatorum annuorum.*

[illegible]

[illegible]

[illegible]

# TITULUS II.

## De uſu & uſufr. & redit. & habit. & operis per legatum vel fideicomm. datis.

[illegible]

ſumitur. [illegible] *de uſufruct.* Proprietas autem legata valetur, ſi quis leget fundum [illegible] *ad* [illegible] vel uſumfructum [illegible] cum pleniſſima & libera [illegible] poteſtate alienandi. [illegible] Si uni fundum, alteri uſumfructum ejus legaverit, in [illegible] ambo concurrunt. [illegible] Legatum omnium bonorum continet etiam [illegible] poſt [illegible] teſtamentum [illegible] Reditus hic in ſpecie legatum [illegible] quas ſunt debet ab herede. [illegible] Hæc legata ſunt perſonalia. [illegible]

## Notæ variorum.

[illegible]

# TITULUS III.
## De ſervitute legata.

SErvitutes reales etiam *legantur*, [1] *de quibus ſupra ad lib. 8.*

### *Notæ variorum.*

Servitutes legari poſſunt.

(1) [*Legantur*] Hoc eſt, Teſtator per legatum alteri ſervitutem conſtituere poteſt, ita ut heres obligetur ad patientiam e. g. Heres meus obligatus eſto, *Mevio* ſervitutem actus in fundo meo concedere *Stryk.* Legatum *Servitutis prædialis* eſt (1) *individuum*, unde via legata à ſingulis coheredibus peti poteſt in ſolidum *l. ſ ff h.* (2) perpetuum & *ad heredes tranſitorium, arg. l. 6. ff h. t. l. 4. ff de ſervit.* (3) *ejus dies ex tempore mortis teſtatoris cedit l. 3. ff. h. t. l. un. §. 5. 6. C. de caduc. toll. Wiſſenb. ad ff p. 2. diſſ. 4. th. 13.* Atque *in iis à legato uſusfructus differt l. 5. ff. d. uſufr. l. 3. §. ſ. quib. mod. uſufr. vel uſus am. l. un. §. 2. ff. quand. dies uſufr. leg. ced. Menke.*

# TITVLVS IV.
## Se dote prælegata.

A SI * maritus uxori prælegavit dotem, * quam accepit, valet legatum, quia plus
B eſt in legato, quàm in dote, ratione *temporis*, [1] *1. §. 2.* actionis (nam olim dos tantùm petebatur actione *perſonali*, [2] *3. §. 2. de leg. 3.*) ratione exceptio-
b. nis *competentiæ.* [3] *vid. ſupr. ad tit. ſol. matr.*
C * Et nullam accepit, tùm, * nihil debe-
c. tur, ſi rem aut quantitatem non expreſſerit. *75. §. 1 de leg. 1.* * totam debet, ſi certam rem vel *quantitatem definivit.* [4] *75. §. 1. de leg. 1 §. 15. I. de legat.*
a. * Si Tertius dotem legavit virgini vel viduæ, validum eſt legatum, ſed *conditionale.* [5] *21. 41. §. 1. de Jur. dot. 21 de V. O. 31. 71. §. 2. de condit. & demonſtr. N. 123. c. 37. Cu. 3. c. 13. d. 25.*

### *Notæ variorum.*

Dos in mobilibus conſiſtens, poſt annum demum debetur.

(1) [*Temporis*] Quia legatum dotis mox debetur, dos verò in *mobilibus* conſtituta debetur demum poſt annum *l. un. §. 7. C. de rei ux. act.* Hinc in legato ſubeſt commodum interuſurii. *Stryk.*

(2) [*Perſonali*] Ex teſtamento verò ſimul naſcitur, actio *hypothecaria* pro conſequendo legato. *Stryk.*

Pater liberis teſtamento ſuo beneficium competentiæ auferre nequit.

(3) [*Competentiæ*] Hoc parum operari puto, aut enim agitur contra mariti heredem *extraneum*, & ſic penitus ceſſat beneficium competentiæ, aut agitur contra *filios* ex eodem matrimonio natos, & ſic, *quà filii*, proprio jure beneficium competentiæ habent. Quod pater ipſis per teſtamentum auferre non potuit. *Stryk.*

Plus eſt in legato quàm dote.

Plus eſt in legato, quam in dote. *Tempore* nam dos in re mobili conſiſtens intra annum tàntum reſtituenda eſt *l. un. §. 7. C. d. R. V. A.* Legatum verò dotis adita hereditate peti poteſt, ac proinde præſentationis emolumentum continet *l. 1. §. 2. ff h.* *Quantitate.* Nam filiis mulieris dotem repetentis, qui marito heredes extiterunt, competit beneficium competentiæ *l. 18 ff Solut. matrim.* in dote prælegata non æquè *l. 14. ff de legat. 1.* deinde *onere*, ſiquidem pactum dotem onerans legata dote remiſſum creditur *a. l. 1. §. 1. ff. h.* *Conf. Schilt. ad ff Ex. 39. §. 76.* Cæterum *legatum uxori relictum cum dotis debito non compenſatur l. un. §. 3. C. de R. U. A.* cum nec aliàs debitor compenſandi animo legaſſe præſumatur *l. 85. ff de leg. 2. niſi* alia teſtatoris intentio probetur *d. l. Carpz. p. 3. c. 13. d. 29. Mencken.*

Falſitas in demonſtratione non vitiat teſtamentum.

(4) [*Quantitatem definivit*] Sic enim voluntas teſtatoris quoad quantitatem certa eſt, & falſitas tantùm in demonſtratione, quæ legatum non

non vitiat. Quia ratio legandi legato non cohæret *l. 72. §. 6. ff. de condit. & demonstr.* Nam ex liberalitate legatum proficiſcitur, & ſic abſque cauſa ſubſiſtere poteſt. *Stryk.*

Legatum dotis, cenſetur habere conditionē nuptiarum.

(5) [*Conditionale*] Si ſc. nuptiæ ſecutæ. Aliud eſt, ſi pater filiæ dotem legaverit, quod purum legatum eſt, cum intuitu ſive loco legitimæ relictum cenſeatur. Ex quo ſequitur, ſi filia præter legitimam accipiat dotem legatam, quod tunc dos conditionalitèr legata ſit, quia tunc tanquam extranea conſideratur. Aliud quoque eſt, ſi ſtuprator ad dotandam ſtupratam condemnetur, ubi dos mox debetur, quia ad ſatisfactionem ejus pertinet. *Stryk.* Dos igitur tunc non cenſetur ſub conditione relicta, ſi pater filiæ dotem legaverit, hoc enim legatum pro legitima aſſignatum putumque cenſetur *a l. 32. C. de in offic. teſtam.* (2) Nuptiæ, non tam conditionem, quam terminum ſolutionis exprimant *l. 5 C. quando dies legati. Mencken.* *Si ſe tales virgo vel vidua nuptias celebraverit.* Cujus adeo legati conditionalis effectus hic eſt, quod ſi ante ſecutas nuptias moriatur legataria, legatum tum ad ejus heredes non tranſmittatur. *Haber. ad Weſ. h. n. 2.* quod ampliu, etſi jam Sponſa fuerit de præſenti *per tit. ſupr. Conſ. Carpz. loco hic alleg. Paganſ. Man. 1.*

# TITULUS V.

## De optione & elect. legat.

Legatà optione, [1] olim ipſe Legatarius eligere debebat, §. 23. *I. de legat.* quod hodiè etiam heredi [2] ipſius licet, *d.* §. 22. & poteſt Legatarius optimum eligere. [3] *9. §. 1. de dol. mal. vid. L. ult. §. 1. C. comm. de leg.* ſtipulantis optionem heres poteſt eligere; *2. §. 2. de V. O. 71. §. 3. de leg. 1.* [*Obſ. 76.* [4] *de V. O.*]

### *Notæ variorum.*

(1) [*Legata optione*] *Electio* legatur vel *Tacitè, ſi relinquatur genus* e. g. ager, equus, unde legatarius eligendi jus habet, niſi aliud teſtator dixerit *§ 22. J. de Legat.* vel *Expreſſe* ſive nominatim, dicituque *Legatum optionis*, quod tribuit jus eligendi optimum *l. 9. §. 1. ff. de dol. mal.* etiā ante hereditatem aditam optio [illegible] *l. 16. ff. h.* ea verò adita, dett[illegible] pore [illegible] tempus, intra quod optetur *l. 6 ff. h.* Extinguitur *ſemel facta electione*, neque enim variare licet *l. 20. ff. h. niſi* juſta cauſa intercedat *l. 5 ff. h.* veluti cum heres fraude adhibita non omnes ſpecies ex quibus facienda ſuit optio, exhibuit *l. 4. ff. h. Mencken.*

(2) [*Heredi*] Modo *poſt* ad tam hereditatem decedat legatarius, antea enim optare non poteſt legatarius, ergò nec jus optandi tranſmittere. add *Brunn. Ex 13 ad J §. 23 n. 2 ſeqq. p. 116 Stryk.* Si legatarius plures heredes habet, aut pluribus legatariis relicta eſt optio, iique inter ſe diſſentiunt in corpore eligendo, ſorte dirimatur cujus ſententia præcellere debeat in optione *§. 23. h. Menken.*

(3) [*Optimum eligere*] Niſi in arbitrium *tertio* à teſtatore optio collata, tunc enim illo defuncto aut optare nolente, ex lege optio quidem legatario defertur, eligere tamen tantum poteſt rem mediocrem *l. ſ. § 1 C. comm. de leg.* Quod ſi ſemel optaverit legatarius, variare poſt amplius non [illegible] *l. 20 ff. h. t.* niſi optio minus legitimè facta, v. g. ſi res optata non fuerit in bonis teſtatoris, aut etiam non omnia teſtatoris bona in medium prolata *Z. ſ. h. t. n. ſ. Stryk.*

Optione ſemel facta, variare amplius legatario non licet.

(4) [*Obſ. 76. d. V. O.*] ibi quidem perſonaliſſima dicitur obligatio, ſed tamen additur, quod ad heredes tranſeat, & dicta phraſi nihil aliud involvi, quam quod facultas optandi alteri committi nequeat. *Stryk.* Vel ſic. Perſonalem dic hactenus, ut ex contractu voluntatis non transfundatur; Cæteroquin ex cauſa neceſſaria utique transfertur, ut morte ſtipulantis, ubi *in heredes tamen tranſit, & ante electionem mortuo. Gothofr. lit. 5. Berger.* *Nec obſtat d. l. 76. de V. O.* Nam tranſmiſſio juris eligendi, adeò heredi non negatur, ut potius diſertè ei ibi aſſeratur, hoc ſolum dicitur, quod electio, ſive eam ſtipulator ſive heres facere velit, *judicio ferri*, de quo ſtipulatio concepta erat, fieri debeat, ut in eo aliqua perſonalitas, ſed tranſmiſſionem juris minimè impediens, occurrat. *Thom.*

# TITULUS VI.

## De tritico, vino & oleo legato.

TRITICUM accipitur *pro frumento* [1] omni *in L. 94. de V. S.* & certo *in lege 9.* Quid per leg. *VINI debeatur,* [2] *vid. l. 19.* ante omnia tamen mens teſtatoris eſt inſpicienda: *l. h. 18. §. 3. de inſtruct. vel inſtrum. leg.* debentur etiam vaſa, niſi ad certum locum deſtinata ſint: *3 §. 1. 14. h. Si quantitas* [3] non ſit expreſſa, omne teſtatoris *vinum debetur* [4] *7. pr.* Qualitatem omiſſam, heres *eligit.* [5] *4. h. Vid. Bach. h.* Quidnam *vetus* [6] aut novum dicatur? *v. L. 9. inf. 10. 11. h.*

### Notæ variorum.

*Appellatione tritici, hic omne frumentum denotatur.*

(1) [*Pro frumento*] H. e. Quod ſatis intrinſecè id pars quoque in reliquo frumento *Stryk.* Sed hoc *ex l. 94. d. V. O.* non probatur, cum nihil aliud ibi dicatur, quam triticum generaliter poſitum, de omnis generis tritico poſſe intelligi, nec crediderim laxam illam ſuppoſitionem, quæ hic adſtruitur, apud probatos *Autores* temere repertum iri. *Tittus.*

(2) [*Debeatur*] Sc. illud, quod in vinea natum, non *Zythum*, nec *acetum*, niſi teſtator vini numero habuerit *d. l. 9. pr. Stryk.*

(3) [*Si quantitas*] Ratione quantitatis, *ea ea debetur, quæ expreſſa eſt*, modo non ſit contra naturam rerum, unde nullum redditur legatum, quo relicti centum modii, qui ſinguli pondo centum pendant *l. 7. §. 1. ff. h. Menckem.*

(4) [*Vinum debetur*] Reſtringunt hoc DD. ad illum caſum, ſi perſonæ *conjunctæ* vinum legatum ſit, & hinc aliud volunt, ſi perſonæ *extraneæ* vinum relictum *v. Brun. ad l. 7. n. 4. Stryk.*

(5) [*Eligit*] Quia legatarius hoc caſu non habet actionem realem, nam quantitas vindicari non poteſt, hinc undecunque ſumere poteſt heres, ubi Electio Legatario data *l. 1. §. 1. ff. h. Stryk.*

(6) [*Vetus*] Omne vinum, quod non eſt *hujus* anni, eſt vinum vetus. *Stryk.*

*Vinum vetus.*

# TITVLVS VII.

## De inſtructo vel inſtrum. legat.

LEgato fundo & inſtrumento, utrumque *principaliter* [1] legatum eſt: Legato fundo cum inſtrumento, inſtrumenta ſunt *acceſſoriæ,* [2] *v. 5. h.* Et his caſibus debetur tantum fundus cum ſuis inſtrumentis, quæ *fructuum* [3] quærendorum, conſervandorumque gratia comparata ſunt, *8. 12. h.* Legato *fundo inſtructo* [4] debetur fundus cum inſtrumentis & omnibus, quæ paterfamil. *uſus* [5] & ornamenti gratia ibi habuit: *12. §. 27. 28. 36. h.* non etiam, quæ tantum cuſtodiæ aut *venditionis gratia* [6] ibi habuit. *12. §. 36. 29. Carpz. 3. c. 13. d. 27. l. 12. §. 37. h. 44. de leg. 3. Carp. 3. c. 13. d. 25.*

### Notæ variorum.

*Pereunte fundo debentur adhuc inſtrumenta.*

(1) [*Principaliter*] Et hinc fundo pereunte debentur adhuc inſtrumenta ab interitu conſervata. *Stryk.*

*Inſtrumentum eſt, quod fundi inſtruit.*

(2) [*Acceſſoriæ*] Hinc ſi teſtator fundum vivus alienavit non amplius debetur inſtrumentum *l. 5. ff. de inſtruct. vel inſtrument. legat. Stryk.* Cæterum inſtrumentum in genere deſcribitur, quod ſit apparatus rerum diutius manſurarum, ſine quibus exerceri nequit poſſeſſio *l. 12. ff. h.* in ſpecie domus *a. d. l. 12. §. 16. ff. h.* fundi *l. 18. §. 10. ff. h.* vineæ *l. 10. §. 1.* Medici *l. 18. §. 10. ff. h.* Lanionis *l. 18. pr.* Piſtoris *l. 17.* Piſcatoris *l. 17. §. 1. ff. h. Menckem.*

(3) [*Fructuum*] Itaque frumentum ad ſemina, & alendam familiam ſub hoc legato venit *l. 12. pr. ff. h.* Quod ſi quis leget fundum cum inſtrumento, & in ſpecie certæ rei meminit, per hanc ſpeciem generalitatem non tollit, & fundus adhuc cum aliis inſtrumentis debetur, quia ſpecies tantum declarationis cauſa adjecta *d. l. 12. §. pen. Stryk.*

*Sub hoc legato, frumentum ad ſemina & alimenta das Saat- und Brod-Korn* [illegible]

(4) [*Fun-*

(4) [*Fundo inſtructo.*] Sive cum omnibus *permanentibus* Geräth, Mit allem was Ich auf dem Guhte habe *Stryk.* Fundus inſtructus, ſive fundus & inſtrumentum ein Guht ſambt völliger Einrichtung, ſi legetur, continet fundum, inſtrumenta & omnia, quæ paterf. uſus ornamentique gratia in fundo habuit *l. 12. §. 27. 34 35 36 ff h.* Spectatur autem id, quod in fundo ex tempore, quo cedit dies legati *l. 28. ff h.* neque eſt fundi & inſtrumenti legatum verbis & circumſtantiis vergentibus æque principale *l. 5 ff h.* utroque uno intereunte, alterum adhuc deberi poteſt *d. l. §. 17. Schelter ad ff. Exerc 39 §. 85. Menoken.* Fundus cum inſtrumento legatus nihil amplius involvit, quam ut legatarius ea ſimul cum fundo conſequatur, quæ fructuum quærendorum conſervandorumque cauſa comparata ſunt, *l. 8. & l. 12 ff h. t.* Germanicè poſſes vocare die Hofwehr, vel juxta ſtylum aliorum locorum die Beſatzunge. Fundus *inſtructus* autem plus comprehendit, nempe ea, quæ paterfam uſus & ornamenti gratia ibi habuit, den Hausrath, die Mobilien quo & veſtes pertinent, & bibliotheca, & id genus alia, non verò, quæ cuſtodiæ ſaltem cauſa in fundo fuerunt, v. *d. l. 12. §. 27. 28. ſeqq ff eod.*

Illud quoque notabile eſt, quod particula: *CUM*, nec non particula *ET*, maximam diverſitatem involvit, ſi inſtrumento legato adjicitur, ſcilicet, ſi ita dixit teſtator: *Fundum cum inſtrumento do, lego*, inſtrumentum loco acceſſionis habetur & per conſequens, ſi fundus interit, illud non debetur. At ſi verba legati ita concepta *Fundum & inſtrumentum do, lego*, utrumque tanquam principale conſideratur, & hinc licet unum interiiſſet, alterum tamen nihilominus adhuc debetur, *v. l. 5 ff. h. t.* ubi quidem *Labeonis* ſententia ab opinione *Pauli* recedere videtur, *Labeo* tamen *Pauli* ſententiam deinde haud obſcure approbat. Poſſet hinc deciſio ſumi, ſi quis ita dixiſſet Ich vermache Cajo ſein Pferd nebſt Sattel und Zaum, vel ſi aliter formalibus uſus eſſet: Ich vermache ihm das Pferde wie auch Sattel und Zaum. *Lud. h.*

(5) [*Uſu.*] V g. Mancipia & inſtrumenta fundi, nec non cibaria & alimenta ad alenda pecora & familiam neceſſaria *Carpz. alleg loc Stryk.*

(6) [*Venditionis gratia*] Ergo non venit inſtrumentum aſſervatum ſaltem venditionis cauſa *l. 12. §. 29. 30 & 37 ff de inſtruct. vel inſtrum. legat.* vide *Stravv. Synd. forenſ. §. 11. de legat. Stryk.*

# TITULUS IIX.

## De pecul. legat.

V*id. ſupr. lib. 15. tit. 1. &c. vid. ipſas LL. 3. & 1.*

### *Notæ variorum.*

Legato ſervo, cum peculio, extincto ſervo, & peculium extinguitur.

[*Ad Rubric*] Legatus vel ſervus cum peculio, etſi ipſe poſtea à domino manumittatur, alienetur, vel moriatur, peculio legatum etiam, tanquam acceſſio ſervi extinguitur *l. 1, 2 ff h.* vel peculium idque vel *auctum*, & legati dies cedit à tempore mortis teſtatoris *l. 8. § 1 ff h.* vel ſervo ubi legati dies à tempore aditæ hereditatis cedit *d. l.* neque enim ante libertas ſervo competit, *l. 8. ff quand. dies leg.* atque cum peculio acceſſiones etiam quæ ſunt extra peculium, utpote ex ſtipulatione quæſitæ, annumerantur *d. l 8. § 1 § 20. ſ. de Leg. Menoken.* Eſt adhuc *Titulus IX de Penu Legato*, quo nomine veniunt omnia, quæ eſui potuique inſerviunt. Excipiuntur autem medicamenta, licet bibantur, quia ſub nomine penoris ea tantum veniunt, quæ alendi gratia bibuntur *l. 5. de pen leg.* Et hinc decidenda quæſtio, an penu legata etiam Tobacum veniat? Ubi diſtinguendum, an Tobacum ad quotidianum uſum adhibeatur, an vero tanquam medicamentum.

Tit. 9. de penu legato.

Tit. 10. de ſuppellectile legata.

Et *Titulus X de ſuppellectile legata*, quale comprehendit omnia illa, quæ ad quotidianum uſum rei domeſticæ pertinent, & nomen ſeparatum non habent. Non itaque huc pertinent, inſtrumenta artificum, neque vaſa pretioſiora *Stryk.* Legatum penoris, des Küchen und Keller Vorrahts (hoc vocabulum in omnibus generibus uſurpatur *l. 4. § 3 & 1 ff h.*) eſt, quo potiſſimum ea, quæ uſui potuique ſunt, & in uſum communem totius familiæ parata, continentur *l. 2. pr. & § 1 ff h.* legari etiam *ſolet penus eſculenta aut poculenta tantum l 3 § 2 3 4 ff h.* eoque relicto etiam vaſa debentur *l. 3 § 1 ff h.* item ligna, carbones *l 3. § 9. ff h* aromata *l 5 § 1 ff h.* Legatum *ſuppellectilis*, Hausrath, eſt, quo domeſticum patris f. inſtrumentum & omnes res mobiles, non animales ad uſum communem familiæ, ſive neceſſarium ſive voluptatum pertinentes

*a* continentur *l. 1. 2. 3. 11. ff. h.* Anterioris ſeculi rigor *aurea & argentea* excluſit *l. 1. 3. §. ſ. ff. h.* quæ *poſterior ætas* tamen *admiſit l. 9. §. 1. h.* *adeoque etiam hodiè* vaſa, pocula &c. argentea quæ fuerunt in quotidiano uſu teſtatoris, *huc pertinent. Sand. l. 2. t. 5. d. 5.* Cum verò *inſtrumenta artis*, das Handwercksʒeug/ ad communem uſum paterſam non perveniant, ſed artificii, ab hoc legato *excluduntur l. 6. 9. ff. h. Mevius.* Quo quidem titulo, quem omiſit *Autor*, commodè de legato mobilium agi poteſt.

Legato mobilium continetur pecunia.

Sanè *jure civili*, legato mobilium continetur pecunia *l. 79. §. 1. d. leg. 3.* Neque quisquam, opinor, negaverit, voces vernaculas Fahrnuß / Bewegliche Haab / æquè latè patere, ac mobilium vox apud *Latinos*, quia nec illam *Latinam mobilium* vocem in foro *Germanico* degeneraſſe, aliumque ſenſum induiſſe, crediderim. Licet *Weſſenbachius de legat. 3. th. 9.* aliique, quos ipſe ibidem commemorat, contendant, uſu fori & loquendi hodierno mobilium voce ſuppellectilem ferè deſignari, non pecuniam. At diverſa eſt ratio linguarum exoticarum à noſtra & *Romana*, nam *Galli*, *Itali*, *Hiſpani* voce mobilium, *meubles*, intelligunt ferè ſupellectilem; & Noſtrates cum hac voce peregrina utuntur, intelligunt ea, quæ ad domum inſtruendam habentur, non pecuniam. Qua ratione *Collegium Vitembergenſe* ex facto conſultum *Anno* 1692. reſpondit. Compara *Huberum præl. h. n. 5.* Similiter legatum auri, argentique varietati linguarum, motuique ſubjectum eſt. Nam, licet jure *Romano*, quicquid auri argentique relictum eſt eo legato continetur, ſive factum ſit, ſive infectum, tamen *Galli* de ſuo idiotiſmo contrarium teſtantur, *Tiraquellus de retract. gentil. §. 1. gl. 20. n. 1. & 2. Mornac. in L. 2. C. de conſtit. per quos extat Huber præl. ff. de aur. arg. leg. n. 1.* Neque enim *Galli* habent vocabulum quo nummos ſive pecuniam ab auro argentoque diſtinguant, ſed vox *argent* in celebriore ſententia ſoli pecuniæ convenit. Sed uſus noſtri ſermonis cum Romano conſpirat, cum habeamus proprium nomen, Geld, quo nummos ab auro argentoque facto infectove diſcernimus. Igitur legato auri argentique, Gold und Silber/ vix eſt, ut pecuniam contineri exiſtimemus. *Berger.*

# LIBER XXXIV.

## *TITULUS I.*

## De alimentis & cibariis legatis.

IN Legatis alimentorum conſidera * (1.) Conſtitutionem, quæ fit nomine alimentorum, educationis, victus, *43. 44. de V. S. f. h.* non etiam *diarii*, (1) aut cibarii 21. h. A

* (2.) ſignificationem. ſc. omnia, quæ ad vitæ ſuſtentationem ſunt neceſſaria *6. h. 43. 44. 234. §. f. de V. S. f. h. Speidel. voc.* Unterhaltung. *Gadd. ad d. L. 44. n. 12.* non etiam *ſumptus funeris:* (2) *Carpz. 2. c. 46. d. 23. & quæſt. 61. n. 115.* nec comprehenduntur nomine alimentorum *remiſſorum* (3) habitatio & veſtes. *8. §. 12. de tranſact.* nec ſumtus *ſtudiorum*, (4) niſi teſtator id voluerit. *6. 7. h.* (*obſ. 4. ubi pup. educ. deb. 12. §. 3. de adm. & peric. tut. 6. §. 5. de Carb. Edict.*) a

* (3.) *quantitatem*, (5) *ſecundum L. 22. h.* a

* (4.) *durationem*, (6) * ſi nullum tempus adjectum, tùm ad dies vitæ Legatarii debentur, *14. pr.* morte autem deſinunt. *8. §. 10. de tranſact. Carp. 2. c. 46. d. 23.* 2. B

C * Si ad tempus, * pubertatis, tum debentur ad *plenam pubertatem*, (7) *14. §. 1. vid. Hahn. ad W. & Bach. h.* b.

c * certum promiſerit (e. g. ſtuprator baſtardo ſuo alimenta) & is ante id moriatur, nihil tranſmittitur ad matrem *ſtupratam* (8) *Carpz. q. 61. n. 112.* nam ejuſmodi legatum ratione creditoris eſt perſonale, ratione debitoris verò *reale*, (9) *2. §. 1. 16. pr. 18. §. 1. h.*

*Nota*

Notæ variorum.

# TITVLVS II.

## De auro, argent. mundo, ornament. unguentis, veſte vel veſtim. & ſtatuis leg.

QUid auro legato veniat, *docet L.* 19. h. [1] non etiam debetur illud, quod teſtatori debetur, 27. §. 2. h. nec pecunia *ſignata* 19. [2] Legatâ pecuniâ *pecoria*, [3] non debentur nomina C. 5. [illegible] *Habet.* h. *Veſtimenta*, [4] legata etiam teſtibus debentur, [illegible]

### *Notæ variorum.*

([illegible]) [illegible] *Bergf.*

(1) [*Docet* [illegible]] [illegible] *Bergf.* [illegible] *Mornac.*

Mediolani ad pecuniam [illegible]

(2) [*Signata*] [illegible]

(3) [*Pecoria*] [illegible]

Legatum [illegible]

(4) [*Veſtimenta*] [illegible] *Bergf.* [illegible]

Quæ [illegible]

[illegible]

# TITULUS III.

## De liberatione legata.

HOc legato [1] [illegible] *ad eum* [2] [illegible] de leg. 3. Acquiritur Legatario *exceptio* [3] peremtoria, 3. §. 3. [illegible] de actio ex teſtamento, ad id, ut heres eum per acceptilationem *liberet* [4] 3. §. 3. Hoc legatum ipſo jure nullum eſt, ſi Legatarius *nihil debet*, [5] 75. §. 1. de leg. 1.

leg. [illegible] Poteſt etiam creditori debitum legari, modò *plus ſit in legato*, (r) quam fuit in debito, § 14. *l. de legat.* [illegible] utique vel ratione rei, vel loci, vel quantitatis, qualitatis, actionis, temporis, &c. [illegible] (*vide Diſſenſ. veterum.*)

## Notæ variorum.

[illegible]

# TITULUS IV.

## De adimend. vel transferend. legat. vel fideicomm.

A*DEMTIO* eſt actus, quo per contrariam legantis voluntatem legatum D
antea rectè relictum, iterum adimitur. *4. h.* Fit contraria *voluntate*, (1) (1.)
(etiamſi promiſerit teſtator, ſe non receſſurum ab illa voluntate: *22. de leg. 3.*) quæ *probanda* (2) eſt. *21. de probat. Finckelth. O. 118. n. 6.* Declaratur * verbis directò contrariis, e. g. non do, non lego, vel æquipollentibus, e. gr. A
ſi dicat Titio, pro fundo Tuſculano 100. do lego *6. §. f. h. v. 3. §. 10. h.* aut ſi in codicillis legatarium dixerit peſſimum hominem, *13. §. 1. h.* aut ingratum: 29. viva voce, & in ſcriptis, *coram V. teſtibus.* (3) *14. §. 1. h. junct. f. C. de codicill. L. 31. de R. I. 27. C. de teſtam. Ca. 3. c. 13. d. 31. (obſ. 3. §. f. h. 18. de leg. 3. 27. C. de fideicom. 3. 12. de teſt. 4. §. 10. d. dol. except.)*
* Facto, quod ad ademtionem tendit * Directò, e. g. cancellatione, inciſione, &c. à teſtatore conſultò facta, &c. 16. etiamſi abſque ullo teſte fiat, a. B
* per Indirectum, * ut alienatio, licet b.
ipſo jure *nulla*, (4) *24. §. 1. h. f. C. ſi maj. fact. arg. 20.* hôc animô facta, *§. 12. I. de leg.* C
quod ex circumſtantiis dijudicandum: (*obſ. 8.* (5) *pr. de leg. 1. 15. h.*) In dubio tamen, ſi res legata eſt alienata, ex cauſa * neceſſariâ, ademtum *legatum non eſt*, (6) *11. § 12. de leg. 3. 30. §. 1. de aur. & arg. leg. niſi probet* (7) heres aliam voluntatem teſtatoris, D
*11. §. 12. h.* * *voluntariâ*, (8) tum ademtum videtur, *18. 24. §. 1.* d.
licet teſtator rem rurſus redemerit, niſi legatarius aliud probet. *15. 27. h.*
* Nominis * Exactio, c.
*75. §. 2. de leg. 1. §. 21. I. de leg. 31. princ. de lib. leg. 11. §. 13. de leg. 3.* niſi Legatarius probet, E
* eam *hoc animô* (9) non eſſe factam: *3. §. f. h. n. 11. §. 13. d. leg. 3. Ca. 3. c. 13. d. 19. & 1. d. 68. Menoch. lib. 4. præſumpt. 148. n. 3. in f.* * Solu- F f.
tionem debitoris *nondum factam.* (10) *Menoch. d. l. n. 3. v. 96. princ. de leg. 1.* * Acceptilatio, *82. §. 3. d. leg. 1. & c. 21. pr. d. lib. leg.* * *Capitalis inimicitia*, (11) c. c.
*3. §. f. 4. 22.* niſi intervenerit *reconciliatio* (12) *4. h.* * Ademptio modi, c.
*30. §. 2.* * Non etiam *oppignoratio*, (13) *§. 12. I. de leg. L. 3. C. eodem*, (*obſ. 32.* (14) *§. 5. de donat. inter vir. & ux.*) *nec fideicommiſſum* (15) à legatario relictum, & rurſus ademtum. *arg. 17. de. leg. 2. 61. eodem Barb. V. 2. D. 13. th. 4. lit. F. (obſ. 3. 1. h)* (16) c.

P Adimuntur Legatariis: 21. ſi duobus Titiis legatum, & uni tantùm ademtum, nec conſtat, cui? tum *utrique debetur.* (17) *3. §. 7. h.*

O Legata validè relicta: 13. Specie legatâ, & individuò adempto, reliqua debentur, vel electio ex reliquis: 11. 12. Si pars adimatur, *reliquum debetur:* (18) *2. §. 2.* Si X. legentur & XX adimantur, cenſentur X. ademta: *3. §. 5. h.* rei legatæ neceſſario cohærente ademto *nihil actum eſt.* (19) *1. §. 4. h.*

G Si legatum ademtum * *verbis expreſſis*, (20) tum ipſo jure non debetur: E
E * ipſo facto, vel alio modo, unde teſtatoris contraria voluntas apparet, tùm legatarius repellitur *exceptione doli* (21) *15. 22. h. 4. §. 10. de except. dol.*

*TRANSLATIO* eſt ultima conteſtatio, qua legatum prius relictum, iterum (2.)
immu-

H I immutatur, & aliud conſtituitur. *5. h. t. L. 6. h.* Fit mutato * ſubjecto D
* honorato, ut quod Titio legavi, Cajo do lego: adeoque differt à conjunctione *
re tantum, quod hic *mutata ſit* (12) iterum prioris legatarii, illic non. *vid. 10. de con-
dit. & demonſtr. (obſ. 15.* (13) *de hoc inf.) 33. de leg. 1. arg. 6. §. 1. h.*
I. * onerato, ut quod à *Titio legavi*, (14) hoc Cajo do lego, *6. pr.* * objecto,
h. ſi res, pro re legata, legatur alia: *6. pr. h.* * modo le-
h. gandi, ſc. quando conditio tollitur à legato conditionali, *10. de condit. & demonſ.* vel
additur legato puro *d. l. 10.*

Fit voluntate ejus, qui poteſt teſtari, *coram V. teſtibus* (15) declarata. In inca- C
pacem facta translatio, amiſſionem ſolam legati prioris *operatur* (16) *20. h.* Tollit E
primum, & conſtituit ſecundum. *5. h.* Legatum ſub conditione translatum, primo
non adimitur ante exiſtentiam. 7. Conditio in primo legato addita, cenſetur repe-
tita in translatione. 24. niſi conditio primæ *perſonæ cohæreat.* (17) *d. l. 24. 25. de condit.
& demonſtr.*

K *INFIRMATUR* legatum * corporis mutatione, propter quam nomen amiſit: (3.)
L. *6. §. 1. de aur. & arg. leg.* quod fit dupliciter, vel * ipſius corporis legati deſtructio-
ne, *88. §. 2. de legat. 3.* licet reſtituatur res peremta, *65. §. 2. de legat. 1.* niſi teſtator
eum in finem e. g. ædificium deſtruxit, ut ibidem ex eadem materia, commodius
exſtrueret: *88. §. 5. de ſolut.* Ædibus *caſu* (18) peremtis area debetur. *22. de leg. 1.*
I * novæ *ſpeciei efformatione* (19) ex re
legata, ab ipſo teſtatore: modò ſpecies nova ad materiam non poſſit reduci; *88. pr.
§. 1. de leg. 3.* nam aliàs non extinguitur, *88. §. 5. de. leg. 3. 44. §. 2. 78. §. 4. eodem. §. 25.
I. de R. D.* periode, ac ſi teſtator hoc noluerit. *44. §. 2. de leg. 1. Bach. (obſ. 44.* (20)
k. *§. 2. de leg. 1.)* * Teſtamento vel codicillis in quibus relicta ſunt, (4.)
infirmatis *14. C. de fideicomm. 100. de R. J.* modò non ſint reſciſſa; tanquam *in officio-*
(5.) *ſa.* (21) *N. 115. c. 3. 4. in f.* * Morte legatarii, ſcil. antequam dies *legati cedat,* (22) k.
(6.) mortui. *L. un. §. 4. C. d. cad. toll.* * Repudiatione *44. §. 1. de leg. 1.* k.
(7.) * Et eadem res *ex cauſa lucrativa* (23) ad legatarium per- k.
venerit. *§. 6. I. h. 18. d. O. & A.*

## *Notæ variorum*

Voluntas in te- ſtamento [illegible] (1) [*Voluntate*] Quia nemo ſibi poteſt legem dicere, à qua non poſſit recedere, *d. l. 22.* quod procedit in actibus *ſolitariis*, non in actibus *correſpectivis*, ſive contractibus, ubi obtinet regula. *Quod ab initio voluntatis, ex poſt facto fit neceſſitatis, l. 5. C. d. O. & A. Struv.*

(2) [*Probando*] [illegible] *l. 22. ff. de Probat. Struv.*

(3) [*Coram V. teſtibus*] Sufficit declaratio voluntatis coram 5 *teſtibus* facta, non requiritur ſolennis coram 7 *teſtibus* [illegible] *C. de codicil. l. 35. ff. de R. J.* [illegible] *Ad Obſ.* [illegible] voluntatem *l. 4. §. 10. de dol. mal. & met. except.* [illegible] *contra voluntatem.* Nudam voluntatem opponi cum ſolis ad [illegible] voluntatem ſolennem non [illegible] probatione, in ultimis voluntatibus legatorum. *Ad Obſ. l. 27. C. de fi-* deicomm. [illegible] probatio *d. l. 12. de teſtib.* [illegible] duo ſufficiunt. [illegible] probationem [illegible] in ultimis voluntatibus legatorum, quæ fit per 5 *teſtes*, [illegible] *d. l. 12.* [illegible] quæ fit per duos. *Berger.* Propter rationem hanc ut *obſervat* [illegible] quod ſc. ſufficiat voluntatem contrariam per duos teſtes, ad revocationem namque legati, ſola paritionem ſufficit, *l. 27. C. de fideic.* hanc autem etiam per duos teſtes probari poſſe, [illegible] unde & per *ſchedulam* revocari poſſe legatum, pronunciatum eſt in facultate [illegible] *A. 1640. d. 21 Jan.* [illegible] Scriptura [illegible] quod duo teſtes. Conſentit *Carpz.* [illegible] *Struv.* Exiſtimat [illegible] legatum adimi non poſſe, niſi adhibeant quin-
que

Ad legati revocationem ſola [illegible] ſufficit.

Scriptura [illegible] idem [illegible] duo teſtes.

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

(17) [illegible]

[illegible]

[illegible]

ut *Richer. in poſit. ad ∫ de adimend. legat. n. 6.* diſtinctionem admittit. Sed *Dn. Thomaſ. in not.* conclutionem adhibendam putat, cum alias ſibi[illegible] à ſe ipſis diſſentiret in *l. 70. § 5. 6. 7. de legat. 3.* Loquitur, [illegible] ratio illa non valde urget, cum [illegible] non ſit, ut Scriptores à ſe ipſis diſſentiant, dum vel priore ſententiae [illegible], vel eam mutant, [illegible] locum hic [illegible], cum Ulpianus [illegible] *in l. 44. § 2. de legat. 1.* loquitur de [illegible] cum [illegible] legaverit, [illegible] ſi [illegible] legata dicat, hic neget. De caetero Ulpianum *in l. 44. § 2. de legat. 2.* [illegible] ad concludendum cedit cum W[illegible], ut de caſu, ubi ex parte [illegible] legata [illegible] ſit, [illegible] accipiatur, [illegible] Sed [illegible] in illa [illegible] locum habent, nam Ulpianus loquitur de nova ſpecie ex [illegible], probat [illegible] exempla [illegible] proponitur, [illegible] verba *in [illegible] ſupra ſcriptis legatum [illegible] & debere*, quod [illegible] hac [illegible] probabiliter non [illegible] ſuperſtitem, ſed novam ſpeciem indicat, [illegible] Ulpiani [illegible] voluntatem, [illegible] legatum [illegible] ſit [illegible] voluntatem, cum [illegible] fuerint. Juxta hanc igitur [illegible] In genere autem puto JCtos Romanos, [illegible] hic eſſe [illegible], quando ex conditione [illegible] voluntatem interpretati ſunt, [illegible] in *d. l. 44. § 2. 3. 4. de legat. 1.* Ulpiano, quando [illegible] in caſu ſpeciali, [illegible] ſemper voluntatem [illegible] conditionem, quaſi [illegible] Quare regula [illegible]

[illegible] (1) in caſu [illegible], (2) in caſu [illegible] *in l. 44. § 4. de legat. 2. l. 39. de legat. 2. l. 79. § 3. de legat. 3.* [illegible] Romanos [illegible] *Thom.*

(30) [*Ob. l. 44.*] *Nec l.* [illegible] ad voluntatem teſtatoris eſſe reſpiciendum. *Bergk.*

(31) [*[illegible]*] [illegible] *Nov.* 115. c. 3. [illegible] *Bergk.* [illegible] *Thom.*

(32) [*[illegible]*] [illegible] *Bergk.*

(33) [*Ex cauſa turpi*] [illegible] *Bergk.* [illegible] *Romani*, [illegible] *§ 6. J. de legat.* [illegible] *Thom.*

# TITULUS V.

## De rebus dubiis.

*Junge L. 6. C. tit. 38. de V. & ver. ſignif.*

(1) *Infirmatur legatum *Ambiguitate* (1) Scripturae, ex qua non apparet, quid, cui relictum: *[illegible] de his, quae pro non ſcript. [illegible] 10. pr. 27.* Voluntas tamen teſtatoris praefertur, *12. h.* quae praeſumitur in re aequiori *l. 10. § 1. h.* & veriſimiliori, (2) *[illegible] Richer. ad L. 17. C. de teſt.* [illegible] (*quae prior mortuus ſit?*) (3) [illegible]

 *Ne-*

## Notæ variorum.

[illegible]

TIT.

# TITVLVS VI.

## De his, quæ pœnæ cauſa relinquuntur.

*Iunge l. 6. C. tit. 41.*

(a)

**I**Nfirmantur [illegible] legatum pœnæ adjectione [illegible] legatum, quæ coercendi heredis gratia relinquuntur [illegible] in ſolum heredis odium, non etiam ob favorem legatarii, aut [illegible] hæc eſt [illegible] conjunctam, nam tum funt ipſa legata ipſo jure nulla. [illegible] l. de legat.

### Notæ variorum.

[illegible]

tum pariale, de quo *Auctor* hic, & poterat quidem illud purum & validum videri, cum etiam affirmatio ſit impoſſibilis, adeoque negatio neceſſaria & conſequenter obligatio heredis pura. Verum cum heres moleſtiam quid ſubire debeat, & quidem ideo, quod impoſſibile & turpe omittat, meritò illa teſtatoris diſpoſitio, velut naturæ & legibus vim faciens adeoque abſurda, improbatur. Nec obſtat *d. §. 10. I. de H. I.* pertinet enim ad legatarium, inter quem & heredem magnam hac in parte eſſe diſparitatem, ex dictis conſtat. *Titius.*

# TITVLVS VII.

## De Regula Catoniana.

(10) Infirmantur etiam legata * Regulâ Catonianâ, quæ ſic definit: quod, ſi teſtamenti facti tempore deceſſiſſet teſtator, inutile foret, id legatum quandocunque deceſſerit, *non valere* (1) *l. 1. h.* K.

### *Notæ variorum.*

Quod ab initio eſt vitioſum, ex poſt facto non convaleſcit.

(1) [*Non valere*] Sive. *Quod ab initio eſt vitioſum, ex poſt facto non convaleſcit.* Loquitur tamen hæc *regula Catoniana* propriè tantum de caſu, quando vitium eſt in ipſis re legata, e. g. ſi legatarius non fuerat legem, quæ tempore mortis jam eſt profana. Nam ſi ſit in perſona legatarii, e. g. ſi legatarius tempore legati fuerit relegatus, ſed tempore mortis reſtitutus, tunc habitus tempore mortis inſpicitur. *l. 3. § 2 ff. de J. Fiſc. Stryk.* Perdit hæc regula effectum ſuum. (1) *in legatis conditionalibus*, in his enim tempus exiſtentis conditionis ſpectandum, *l. 2 ff. h. l. 41. §. 2. ff. de Legat. 1.* (2) *in legatis, quorum dies ab adita hereditate cedit. l. 3 ff. h.* e. g. in uſufructu, uſu, *l. un. § 2. ff. quand. dies uſusfr. leg.* libertate legata, *l. 8. ff. quand. dies legat. Menckius.* *Obſ. l. 1. §. 2. h.* tit. quod ibi res fuerit aliena, antequam legaretur, adeo ut ab initio legatum conſiſteret, nam in eo eſt *JCtus*, ut caſus, qui alioquin impenſè ad regulam Catonianam pertinere videri poterant, ſed ob ea penitus differant, recenſeat, hanc ſententiam *d. §. 2* hic reddit *Item ſi tibi legatus ſit fundus, qui ſcribendi* (non ſcripti & penitus abſoluti) *teſtamenti tempore tuus eſt* & enim verò hæc in teſtamento condendo adhuc occupato) *teſtatore alienaveris* (adeo ut alienationis momentum, legandi actum antevertere) legatum tibi deberur (nam res aliena tibi ab initio legata eſt, quod non deberetur, ſi teſtator ſtatim (cum nondum res alienata & legata eſſet) *deceſſiſſet.* De cetero definitio *regulæ Catonianæ* ultimis voluntatibus magis vim facit, quam eas rectè explicat, non cum à ſua illa benigniore interpretatione dicantur, poterat ſane legatum validum pronunciari, licet tempore teſtamenti conditi, inutile fuerit, modo tempore mortis valere queat. *Titius.*

# TITULUS IIX.

## De his, quæ pro non ſcriptis habentur.

*Junge L. 6. C. tit. 51. de caduc. tollend.*

K. Infirmantur (1) etiam * propter legatarii qualitatem & alias ob cauſas, propter quas illa pro non ſcriptis habentur, ut (1.) ſi legatum ſit incapaci: *1. C. de hered. inſtit. ſ. 4. §. 1.* (2.) ſi ipſe adſcripſerit legatum propria manu ſibi, vel quem habet in poteſtate *14. pr. ad L. Corn. de falſ. 10. pr. eodem.* & vice verſa, *15. d. t.* non etiam ſi filio *emancipato,* (2) *22. §. 2. ad L. Corn. de falſ.* aut *marit.* (3) *11. §. 1. ad L. Corn. de falſ.* (11)

Hæc ſunt ipſo jure nulla: 1. Teſtamentarius incidit in crimen falſi, ac poteſt extraordinariè puniri, *6. ad L. Corn. de falſ. Licet juſſu* (4) teſtatoris hoc fecit *14. pr. d. t. propter 15.* (5) *eod. & 3. C. h. t. Cu. 3. c. 3. d. n.* niſi teſtator ipſe *ſubſcripſerit,* (6) hanc ſua voluntate ita eſſe facta. *14. pr. 15. §. 2. 1. §. 8. d. t. Cu. 3. c. 3. d. 11.* aut generaliter ſiltum, K

tem, ſi aliquis ſcripſit, qui ſunt in *ejus poteſtate.* (7) [illegible] Ejuſmodi legata igitur manent, apud heredem: & quidem *ſine onere,* (8) [illegible] niſi *in caſu* (9) *L. ſ. h.* & (2.) *L. 26.* (10) *§. 6. de fideicomm. libert.*

## *Notæ variorum.*

[*Ad Rubricam*] Legata *habentur pro non ſcriptis,* quando apud heredem [illegible]

(1) [*Inſcriptum*] Legata hæc [illegible]

(2) [illegible]

(3) [illegible]

(4) [illegible]

(5) [*Propter ea*] [illegible]

(6) [illegible]

(7) [*Ejus poteſtate*] *Teſtatoris* [illegible]

(8) [*Sine onere*] [illegible]

(9) [*In caſu*] [illegible]

(10) [*L. 26.*] [illegible]

Quod quis per alium facit, ipſe fecisse videtur.

Qui in potestate teſtatoris eſt, [illegible]

## *TITULUS IX.*

# De his, quæ ut indignis auferuntur.

*Junge L. 6. C. 1. 35.*

Indigni (1) hic ſunt, qui quidem habent teſtamento factionem paſſivam, ſed tamen propter delictum adverſus teſtatorem, vel ejus voluntatem commiſſum, vel alium (12)

ob

A ob cauſam, legato indigni cenſentur; idque * vel à lege, ut (1) qui defunctum aut ejus [illegible] occidit: [illegible] (2.) qui cauſam mortis culpâ præbuit [illegible] (3.) qui necem teſt[illegible] non ſunt ulti [illegible] 17 20. (4.) qui accuſavit teſtamentum ut inoffi[illegible] ſum, [illegible] falſum: &c [illegible] (5) qui defunctum gravi dedicâ [illegible] fecit, [illegible] aut ſtatus controverſiam movit: [illegible] (6.) qui contra tabb. bonorum poſſeſſionem [illegible] 2. (7) qui mulierem contra legem [illegible] duxit, ei aufertur illius mulieris hereditas: 2. §. 1. 13. (8.) qui in fraudem juris promiſit ſe reſtit[illegible] perſonæ, quæ tamen capere non poteſt * 10 11. 18. (9.) qui hereditatem compilavit, quatenus compilavit: [illegible] (10.) qui de hereditate [illegible] paciſcitur [illegible] 29. §. f. & [illegible] de donat.

B (11.) ſi tutor pupillam duxerit [illegible] 2. §. 1. * vel à teſtatore, v. g. ſi legatarium malè de ſe meritum dixit. [illegible] C.

E Hæc legata ſubſiſtunt ipſo jure, vindicantur ſiſco. [illegible] de jur. ſiſc. [illegible] §. [illegible] de [illegible]

## Notæ variorum.

[illegible]

*l.* 10. 11 18. *ff. h. ſive indignitas contingat reſpectu delicti*, uti, cum (1) *mulieri quod contra leges damnata relictum*, ceu judicatum eſſe refert. *Huber. præl. ff. h. poſ.* 6. *Sande l.* 4. *t.* 4. *d.* 5 (2) adulter *adulteræ quæcunque legaverit, l.* 13 *ff. h. Huber d. poſ.* 6. *ubi præf.* (3) teſtator *legatarium voluntatem ſuam non meruiſſe declaraverit, l.* 4. *C. h.* In *Sabaudia* quoque Fiſci jus eſſe in caſu indignitatis ſalvum, teſtatur *Anton. Fab. in C. l.* 6. *t.* 15 *d.* 4. Licet in *Gallia* abrogationem fiſci juris largiatur, interim *quoties verus fiſco hæc in parte detrahunt legatum non pœnæ illum, cui relictum eſt, ſed heredem permanere*, cum favor heredis illud fiſci odium peperit, *bene monitum à Sand. l.* 4. *t.* 4. *d.* 5 Aliquando *indignus ablata cedunt heredi, quod obtinet*, cum legatarius [1] *tutelam recuſat, contra cujus quod ipſi relictum eſt l.* 5 §. 2. *ff. h.* [2] celat *teſtamentum, quo datum eſt legatum in fraudem ſcripti heredis*, quoties illud poſtea emergit in lucem *l.* 25 *C. de legat* [3] Inimicitias *capitales cum teſtatore gerit, l.* 9. *ff. h.* eidemve palam maledicit, *l.* 9. §. 1 *ff. h.* Cæterum, quoniam pro herede quam fiſco in talibus reſpondere benignius eſt, *l.* 10. *ff. d. j. fiſci* exiſtimo, *tamen, quoties hodie vel ſtatutum vel voluntas teſtatoris pœnam privationis legati hereditatisve inducit*, in heredum *utilitatemve* non fiſci favorem *ad conſtituentem tendere*. Itaque *jur. Saxon. Eccl. conjux conjugem deſerens*, heredibus ejus urgentibus cauſaque cognita, *nihil ex bonis defuncti lucratur*, ſed quæ conjugi debebantur hereditatem augent, *l.* 10. §. 1. *ff. ſol. matr. p.* 3. *C. El. t.* 26. *ubique Carpz. p.* 3. *d.* 1. 10. 11 19. Item *quando teſtator voluntatem ſuam impugnantem relictum perdere vult*, valida eſt illius declaratio, *a. Nov.* 22. *c.* 2. *impugnatio* tamen *temeraria* ut pœnæ ſit locus *requiritur*, *Carpz.* 3. *c.* 7. *d.* 23. 24. *Rich. d.* 42. & quod relictum eſt non fiſco, ſed hereditati acquiritur, *c. z. cit. loc. conſ. Menochium.* Aliquando lex poſitiva legatariis ob delictum legata aufert, quam hodie etiam obſervari plerique contendunt. Sed *Carpz. pr. Cr. qu.* 135 *n.* 27. exiſtimat, omnem confiſcationem per *Nov.* 134. *c.* 13 eſſe abrogatam eamque in rem affert præjudicium, quo filio parricidæ, portio hereditaria quidem abjudicata, ſed non fiſco, verum coheredibus aſſignata fuit. Licet vero iſta ſententia ex rationibus civilibus ſuſtineri nequeat, æquitate tamen ſe commendat. *Titius.*

Omnis confiſcatio per Nov. 134. ſublata.

# LIBER XXXV.

# *TITVLVS I.*

## De condit. & demonſtr. & cauſ. & mod. eorum, quæ in teſt. ſcrib.

*Junge L. 6. C. tit. 40. 44. 45. & 46.*

DE CONDITIONE *vid. ſupr. de condit. Inſt. & tit. de paƈt.* Mutatio religionis, ob lucum, *turpis* (1) eſt: *arg. 1. pr. de condit. inſt. 9. 14. 15. de cond. Inſt. 5. C. de inſt. & ſubſt. Cz. 1. d. 19.* Impoſſibilis & turpis *detrahitur*, (2) *3. 20. h.* poſſibilis differt legatum. *41. h. 21. quand. dies legat. ced. vid. Bach. V. 2. D. 15. th. 6.*

D *Cautio MUTIANA* (3) eſt, qua is, cui aliquid ſub conditione non faciendi, quæ ante perſonæ honoratæ mortem exiſtere non (*v. 72. §. 2. 101. §. p. h.*) poteſt, relictum eſt, *vid. 10. d. V. O. §. 2. 7. eod.* cavet, illi, ad quem res deficiente conditione perventura eſt, ſe conditionem impleturum, aut quod accepit, vel ejus æſtimationem reſtituturum. *7. 18. junƈt. 73. h. 65. §. 1. ad SCt. Treb. N. 22. c. 44. vid. Bach. V. 2. D. 14. th. 6. G.*

D *DIES* certus exaƈtionem tantum differt. *21. quando dies legat. ced. obſ. 1.* (4) *§. 1.*

D *DEMONSTRATIO* eſt adjeƈtio, quæ præter nomen, rei deſignandæ gratia adhibetur, *34. §. 1.* Falſa demonſtratio * non vitiat ultimam voluntatem, *17. pr. & §. 1. L. 33. 34. h. 6. de R. C. 1. 8. de dot. prælegat.* (modò aliàs conſtet de voluntate. *17. pr. h. 5.* A

h. 11. 14. §. 2. de leg. 1. 108. §. 10. de leg. 1. 1. §. 7. de dot. prœleg. 71. §. 2. leg. 1.) Sive legato adjiciatur, d. LL. ſive legatario. 33. 34. modo conſtet (5) teſtatorem, ſi ſcivisſet, rem aliter ſe habere, tamen ita diſpoſuiſſe. arg. 72. §. 6. h. 4. C. de her. inſt. Co. 6. Reſp. 22. n. 10. vid. tamen (6) 18. §. 1. de her. inſt. * non inducit legatum: e. g. ex 100. aureis, a quos Titio legavi, Cajo 50. do lego: hoc nullum eſt, quoad Titium (7) 72. §. f. h.

D CAUSA eſt, propter quam legatum vel fideicommiſſum relinquitur, ut plurimum a præterito deducitur, per particulas, quia, cum, [illegible] ex. [illegible]

D à præſenti quoque. Weſemb. n. 5. Falſa cauſa * non vitiat (8) legatum [illegible] §. 2. 72. §. 6. h. §. 31. de leg. Co. [illegible] d. 21. & 6. Reſp. 22. n. 6. modo (1) non ſit collata in futurum; (9) ET ſpectet perſonam, cui verisſimiliter (10) teſtator nihil reliquiſſet. Weſ. h. n. 5. Carpz. 3. c. 9. d. 20. inf. §. 32 de excuſ. propter 72. §. 6. h. (Vid. Bach. ad Wſ. l. n. 5.) aut (2.) non probetur teſtatorem erraſſe, [illegible] alioquin non reliquiſſe. 72. §. 6. h. 1. C. de falſ. cauſ. adject. 4. C. de H. I. (& 9. Reſp. 22. num. 16. aut (3.) cauſa adjecta ſit

E per particulam conditionalem. (11) §. 31. I. de leg. 17. §. 3.

* non impedit legati ademtionem. Co. 3. c. 9. d. 21 & 6. Reſp. 22. inf.

MODUS eſt adjectio indicans, quid teſtator poſt acceptum legatum fieri velit. Adjicitur per particulam [illegible] §. f. Legatum modale, ſtatim (12) peteſt exigi modo (13) Legatarius caveat de adimplendo modo. [illegible] de contrah. emt. 50. h. 40. §. f. h. 19. de leg. 3. 48. de fideicomm. libertat. (Vid. Carpz. (14) 3. c. 13. d. 20. [illegible] propter. L. 1. C. de h. t., quæ ſub mod.) niſi modus adjectus ſit ſolius legatarii gratia. (15) 17. pr. D E

## Notæ variorum.

Sub conditione moriendi, quia adjicitur.

(1) [Turpe] Hoc [illegible] ſi [illegible] cauſa [illegible] religionem. [illegible] que quid legat in [illegible] nulla [illegible] Quatenus [illegible] per [illegible] Judæo [illegible] Chriſtianus non [illegible] tamen [illegible] ad verum fidem [illegible] Partim ob libertatem religionis in Imperio noſtro [illegible] J. P. O. [illegible] §. 34. [illegible] d. conditi. [illegible] Menckeni.

(2) [Denotatur] H[illegible] habetur pro non adjecta [illegible] legatum ſub conditione [illegible] non mutetur religio, quod tamen ob notam præcedentem [illegible] turpe [illegible]

(3) [Cauſa [illegible]] Hæc [illegible] legata ſub conditione [illegible] legatario ſub conditione [illegible] Romanis eſt, quod [illegible] hodie ſervari [illegible] Titius Cajo [illegible] [illegible] legatum conditionale [illegible] donec Titius [illegible] conditionem [illegible] Aſt conditio non faciendi [illegible] legatum, vel [illegible] heres [illegible] [illegible] legatum conditionale [illegible] [illegible] de condit. & demonſtr. Supponitur autem [illegible] de [illegible] I. [illegible]

(4) [Ubi [illegible]] [illegible] quod ante [illegible] quod [illegible] Berger.

(5) [Modo conſtet] In dubio præſumitur [illegible] quod teſtator ſimpliciter voluerit rem legare, donec probetur contrarium. Omnis enim præſumtio [illegible]

Omnis præſumtio cedit, probationi contrariæ.

[illegible]

Verum per traditionem ſub ſpe adimplendi modi ſolum dominium revera transfertur, & ſic dano nihil praeter dictam vindicationem remanet, quae tamen in actio perſonalis non adverſus tertium poſſeſſorem, ſed adverſus ſolum accipientem reddi- tur poteſt, prout *ad tit. ff. de condict. cauſ. dat. cauſ. non ſecut.* à DD. exponi ſolet, v. *Struv. Ex.* 19. *th* 17 *Lauterb. h. diſſ* 11.

(14) [*Modo*] Si enim modum non impleverit, revocatur legatum. *Arg.*

(15) [*Diff Carpz.*] Ubi differentiam inter modum & conditionem tantum in contractibus admittit, non verò in ultima voluntate, cum modus ſit cauſa finalis diſpoſitionis, ſed vid. *Brunn. ad tit. l.* 2. ubi diſtinguit inter rationem ſive petitionem & inter effectum. Priori caſu, legatum eſt purum, *l.* 46. § *ſ h. t.* poſteriori autem, conditionale & revocatur, quaſi ob cauſam datum, ea non ſecuta. *l.* 8. *d. cond. & demonſtr. Arg.* Ad Obſt. *arg. l.* 2. *C. de his, quae ſub modo* ibi *modus adſcriptus pro conditione obſervatur.* R. Loqui de neceſſitate implendi, quae aeque in modo, ac in conditione, obtinet, ibi: *ſed ſi per eo non ſtat.* Caeterum in eo differentia eſt, quod implementum conditionis praecedat, modi autem ſequatur. Unde & ſit, ut conditio ſuſpendat actionem, modus non item. *Argor.* *Modus differt à conditione* Ea enim legati petitionem ſuſpendit. Modus verò ſolutionem ejus ſolutionem, uſque dum cautum ſit de modo implendo *l.* 40. § *ſ. l.* 80. *ff h. t.* Hoc ſenſu modus cum conditione comparatur. *l.* 2. *C. de his quae ſub mod.* certè reſolutivam conditionem complectitur, quia modo non adimpleto legatum tanquam cauſa non ſecuta repeti poteſt, *conf. praeſ. arg. Carpz. p* 3. *c* 13. *d.* 26 & ſtatim *poſt principiumſ. ſed obſtat exceptio* *doli* *praeſtita cautione de modo adimplendo*, donec ea interpoſita fuerit *d. l.* 40 niſi (1) modus ſit impoſſibilis *arg. l.* 14. *ff d. cond. inſt.* (2) per legatarium non ſtet, quo minus adimpleatur *l* 2. *C. d. his quae ſub mod.* (3) ſolum legatarii favorem reſpiciat, *l.* 71. *ff h. l.* 95. *ff ad SCt. Treb. l.* 29 *C. d. Poſt. Brunn. cent.* 5. *d.* 31. *Menoch.*

Legatum ſub modo relictum, purum eſt, ſed cautio dari de modo adimplendo.

(16) [*Legatario grato*] V. *gr. Lego Titio* 100. ut ſibi domum comparare poſſit, ad hunc modum implendum praecisè non obligatur. Niſi ſortè teſtator favorem familiae conſideraverit, ſcilicet ut domum pro ſe & poſteris emat. *Arg.*

# TITVLVS II.

## Ad Legem Falcidiam.

*Junge L.* 6. *C. tit* 50.

Haec Lex (lata Falcidio Tribuno plebis, tempore Auguſti anno ab U. C. 745. *teſte Dione lib.* 48.) *eſt plebiſcitum*, (1) quo libertas legandi ad dodrantem reſtringitur, & heredi ultra dodrantem gravato conceditur facultas quadrantem adimendi, & retinendi. *1. pr. h. v.* 5. *de teſt. tut* 14. *C. de fideicomm. v. pr. I. h.* D

Proſpicit Heredi, 71. etiam *ab inteſtato* (2) 18. *pr.* & *partiario* (3) 77. & cujus portioni non oneratae, accreſcit *portio exhauſta*, (4) 78. *h. propter.* 87. § 4. *ubi vid excep.* (5) & heredibus eorum: 10. C. ultra dodrantem oneratis: *1. pr.* *NON* etiam *legatario* (6) licet totum legatum reſtituere debeat, 47. § 1. *h.* aut fideicommiſſario. 47. § 1. *Cr.* 3. *c.* 1. *d.* 12. (licet ſit *univerſalis*, (7) 1. § 19. *ad SCt. Trebell. Carpz.* 3. *c.* 1. *d.* 14.) *Item* (8) *ex L.* 1. § 19. & 63. § 11. *ad SC. Treb.* heredi *ex certa* (9) re inſtituto, concurrentibus *aliis* (10) 13. *C. de her. inſt. Cz.* 3. *c.* 1. 15. S

Ad detrahendam quartam, *ut ſupr. in D.* ab omni legato, 4. *C.* 18. 61. 80. *pr. h. Carpz.* 3. *c.* 1. *d.* 6. *fideicommiſſo*, (12) *vid. Bach. ad. W. h. n.* 1. & *V.* 2. *D.* 14. *th.* 1. *L. F. Cz.* 3. *c.* 1. *d.* 14. *Pr. Ex.* 7. *quaeſt.* 1. & *mortis cauſa donatione* (13) 5. *C. h.* 2. *C. de m. c. donat.* 1. § 5. *quod legat. Cz.* 3. *c.* 1. *d.* 1. § Si res ſit *indiviſibilis*, (13) *vid.* 7. *NON* etiam in donationibus *inter vivos*, (14) 27. *de m. c. donat.* niſi donatio invalida ſit, ac *morte confirmetur*: (15) 25. *C. de donat. inter vir. & ux. v. Carp.* 3. *c.* 1. *d.* 2. *n.* 7. nec in *capionibus* (16) mortis cauſa: 1. § 8. 93. *h. excipe caſum.* (17) *L.* 9. *C. h. Perez. in C. h. n.* 5. O

F Propter favorem heredis, 15. § 1. *h.* § *ſ. I. h.* 71. 86. *in ſ. h. Diſſ. Carpz.* (18) 3. *c.* 1. *d.* 12. & teſtatoris *Cz. d. l.*

Lega-

I Legatum ultra quadrantem, [illegible] *75. §. 5.* [illegible] (i) [illegible] *C. h.* Æſtimatur autem * res ſecundum communem opinionem, *63. pr. h.* & Legatum [illegible], (m) [illegible] &c. *L. 83 ad L. Falcid.* A B

* Here [illegible], prout eſt *tempore mortis*, (n) *§. 2. I. L. 73. pr. Lauterb.* (o) *ex L. 30. §. 1. & ſeqq. 16. §. 1. 11. § 2. & 5. h.* deducto ære alieno. *[illegible] C. de jur. delib.* etiam, quod debet defunctus heredi ipſi, & contra. *6. C. h. 1. §. 19.* b

* in quartam, tantum illud, quod heres habet jure hereditario; non etiam *prælegatum*, (p) aut conditionis implendæ gratia, relictum *74. 91.* b

* Et competunt propterea (1) Jus retentionis, & generalis doli exceptio, *15. §. 1. [illegible] h. 16. §. 5 eod.* (2.) *Rei vindicatio*, (q) *26. pr. ſ. [illegible] C. Fr. [illegible]* (3.) Actio in factum, *in caſu L.* [illegible] (r) *§. 2. de leg.* [illegible] (4.) interdum condictio indebiti ſc. ſi heres ex *errore facti* (s) ſolvit legatum. *1. §. 11. ſ. [illegible] C. [illegible] de condict. indeb.* (5.) *Actio ex ſtipulatu*, (t) ſc. ſi dubium ſit, an lex Falcidia *ſit locum*. (u) (6.) Quibusdam in caſibus interdictum *quod legat.* (w) *de quo inſr.*

C Ceſſant autem * ex parte teſtatoris, (1.) *prohibitione* (x) ſc. *tacitè jam* (y) *Nov. 1. c. 2. §. 2.* ([illegible]) expreſſâ verò [illegible] *N.* [illegible] *§. 2. Lauterb. Schulz. Carpz.* [illegible] [illegible] non etiam ſi ſit [illegible] (z) (*[illegible] Barb. V. 2. D.* [illegible] [illegible] *conſt.* [illegible] *Frantzk.* [illegible] *propter* [illegible] *N.* [illegible]) (2.) *Favore militis* (a) *7. C. 17.* Jure militari teſtantis. *12. in fin.* (3.) Prohibitio alienationis (b) rei legatæ, *N. 119. c. 11.* * perſonæ heredis (1) *Omiſſio inventarii* (c) *N.* [illegible] *§. 2.* (2) Renunciatio, *71. 46.* expreſſa, [illegible] *ſ. ſ. C.* & tacita, e. g. ſi errore juris lapſus integra ſolvat, *9. C.* [illegible] (d) ſolvat *N.* [illegible] *§. 1.* (3.) Fraus & dolus circa legatum commiſſus: *59. pr.* (4.) Coacta hereditatis aditio, ſi ſc. à judice cogatur ex SC.to Pegaſiano [illegible] *de fideicomm. hered. L.* [illegible] *ad SC. Trebell.* [illegible] tamen caſu fideicommiſſarium præſtat quartam deducere. *63. §. 11. ad SC. Trebell.* C c

* ex qualitate legati. (1) *Favor piæ cauſæ*, (e) *N. 131. c. 12.* [illegible] quamodo legata deducuntur tanquam [illegible] (f) [illegible] (2.) Favor libertatis (g) *33. h.* [illegible] *de inoff. teſt.* (3.) Favor legitimæ, liberis vel parentibus debitæ, ſc. ſi ſupplementum ejus legatum: *30. C. de inoff. teſt.* (4.) Si creditori debitum, vel uxori *dos ſit prælegata*, (h) nec ratione quantitatis *plus ſit* (i) in legato, quam debito. [illegible] *de dot. præleg.* [illegible] c

## Notæ variorum

(i) [*Ob prælegatum*] [illegible]

[illegible]

(2.) [*Ab emendatum*] [illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

## Ad TIT. III.

[illegible]

# LIBER XXXVI.

# *TITULUS I.*

## (De fideicommiſſis,) ad Senatusconſultum Trebellianum.

*Junge L. 6. C. t. 49.*

A FIDEICOMMISSUM eſt ultima conſtitutio, quæ verbis *indirectis* [a] alicui aliquid relinquitur. (*) *UNIVERSALE* eſt, quando quis totam hereditatem *vel partem* [b] ejus, reſtituere tenetur. D †

Cauſa Remota eſt in [illegible] *de fideicomm. hered.* Proxima eſt ultima teſtatoris ([illegible]) voluntas, *ex* [illegible] [illegible] *d. leg.* [illegible] *ad SC. Treb.* [illegible] *Rich.* [illegible] plura habet [illegible] vel de larata nutu, 22. C. *de fideic.* ſcriptura, in teſtamento, Codicillis, & *Epiſtola* [illegible] 75 modo adſint teſtes, 22. C. *de fideicomm.* [illegible] *de fideicomm. hered.* [illegible] *de codicill. Rich.* [illegible] *Finckelth. O.* [illegible] Exceptio eſt, ſi præſentem e. g. heredem *reſtituere rogaverit.* [illegible] &c. *vid.* [illegible] *de fideicomm.* [illegible] *de fideic. hered. Finck.* [illegible] *vid. ſupr. de codic.* [illegible] C

B Relinquitur * ab omnibus heredibus, teſtamentariis & *ab inteſtato*, [illegible] *de fideic. hered.* propter [illegible] directis & fideicommiſſariis, [illegible] hic dicitur *fiduciarius* [illegible] S

b. * omnibus *qui ex teſtamento* [illegible] aliquid capere poſſunt. [illegible] *C. de delator.* [illegible] *de his, quib. ut indign.*

Univerſalis fideicommiſſarius rem ſuam conſequitur, (etiam à directo herede, licet ipſi immediate ab alio fideicommiſſario *data hereditas* [illegible] ſit; ſi modo intermedius nolit adire, ac reſtituere: [illegible]) *extraordinaria perſecutione* [illegible] *de V. S.* NON *Rei vindicatione*, [illegible] *de R. V.* [illegible] non *hypothecaria* [illegible] *d. l.* (*Obſ.* [illegible] *C. communia de legat.*) non *hereditatis petitione.* [illegible] *fideicommiſſ. hered. petit.*

De SCto *TREBELLIANO & Pegaſiano*, *vid.* [illegible] Hodie transfuſô Pegaſianô in Trebellianum poteſt *fiduciarius* [illegible] quartam detrahere bonorum & *onerum*: [illegible] Recuſans adire, cogitur ad reſtitutionem totius hereditatis. [illegible] Hæc quarta vocatur in LL. ſemper Falcidia, [illegible] *ad L. Falc.* [illegible] *de vulg. & pup. ſubſt.* [illegible] nam his SCtis extenſa eſt Falcidia ad fideicommiſſa univerſalia [illegible] *ad L. Falcid.* unde procedit argumentum à Falcidia ad Trebellianicam, quæ à fideicomm. univerſalibus deducitur, §§ [illegible] LL. aliud diſponant [illegible] ratione *computationis*, [illegible] *ad L. Fal.* [illegible] in eo quod deducta Trebellianica manet onus pro quartâ *parte* [illegible] apud fiduciarium; Falcidia autem deductâ manet omne onus [illegible] &c.

S Deducunt eam ſoli heredes directi ultra dodrantem fideicommiſſo univerſali gravati, [illegible] ex aſſe aut parte [illegible] [illegible] non etiam *fideicommiſſarii*, [illegible] *Diſſ.* [illegible] (licet cunctus fiducia-

duciarius adierit, & totam hereditatem, non detracta quarta, ſecundo fideicommiſſario reſtituerit. [illegible] niſi directus fiduciarius in gratiam primi fideicommiſſarii quartam non detraxerit. [illegible] Neque liberi de Jur. civ. cum legitima Trebellianicam deducunt (nam in hanc omnia [illegible] imputantur, quæ ex quocunque titulo pervenerunt. [illegible]) deducunt tamen de Jure Can. ſi fideicommiſſum *ſub conditione*, [illegible] aut in diem relictum. *c. Raynuc. c. Raynald. x. de teſtam.* [illegible]

F E Nec non adita hereditate *teſtamento deficiente*. [illegible]

Actiones directæ manent apud fiduciarium, & contra eum. *de hered. inſtit.* [illegible] *de minor.* utiles vero [illegible] pro dodrante tranſeunt in fideicommiſſarium [illegible] pro quartâ manent apud fiduciarium, niſi fiduciarius juſſus ſit certâ re contentus, reſtituere hereditatem, nam tum eſt inſtar Legatarii. [illegible]

Excludunt hanc quartam eademque Falcidiam, ut (1.) Prohibitio, [illegible] (2.) Omiſſio inventarii hereditarii [illegible] (3.) Ad pias cauſas: [illegible] (4.) *Cautio* [illegible] [illegible] O

* *PARTICULARE* [illegible] eſt ſuprema conteſtatio, quâ verbis precariis alicui res ſingularis relinquitur. Hoc per omnia Legatis exæquatum. [illegible] Cauſa Remota eadem eſt, quæ univerſalium. Proxima vero eadem eſt, quæ Legatorum [illegible] A quibus ratione Subjecti, finis, *effectus* [illegible] vel contrariorum differt. D N

## *Notæ variorum.*

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

(4) [illegible]

(5) [illegible]

(6) [illegible]

(7) [illegible]

(8) [illegible]

(9) [illegible]

(10) [illegible]

[illegible]

(11) [illegible]

(12) [illegible]

(13) [illegible]

(14) [illegible]

(15) [illegible]

(16) [illegible]

(17) [illegible]

(18) [illegible]

[illegible]

[illegible]

[illegible] Idem eſt in fideicommiſſo, quod [illegible]

[illegible] velit heredem eorum, cum non [illegible]

[illegible]

# TITULUS II.

## Quando dies legat. vel fideicommiſſorum cedat.

*Junge L. 6. C. tit. 53.*

D

A CEdere diem (1) ſignificat incipere deberi 213. de V. S. Cedit autem dies in legato * puro ex tempore mortis, (2) 5. §. 1. (nam eò retrotrahitur per Juris fictionem hereditatis aditio, & legatarii agnitio. 54. de A. v. O. H 193. de R. J. vid. §. 5. I. de obl. quæ quaſi ex contr. all.) licet heres ſub conditione (3) inſtitutus ſit. 19. §. 2. 7. pr. §. 1. 21. 10 ſ. h. Tranſmittitur ejuſmodi legatum nondum acquiſitum, (4) 5 pr. ſſ. 5. C. h. niſi ſit perſonale, e. gr. Servitus (5) perſonalis, & quorum dies non cedit ante aditionem. 2. 3. 9. h. L. un. quando dies uſusf. leg. 10 L. 14. de u. uſſr. E

* non puro * conditionali, ex tempore exiſtentis conditionis; 5. §. 2. h.

a. B 41. de condit. & demonſtr. 9. 10. 11 12. §. 1. L. 13. h. antea enim nihil debetur, aut tranſmittitur. (6) 3. pro ſoc. 9. §. 4. I. de V. O. 37. de V. O 42. de O. & A. niſi (1.) Conditio non expreſſis verbis, ſed legis diſpoſitione vel ex natura (7) rei legatæ ſit adjecta: 9. 99. de condit. & demonſtr. 8 §. 1. h. 22. §. 1. h. 5. de leg. 1. 107. de condit. & demonſtr 10 de adim. & transf. leg. (2.) Conditio impoſſibilis (8) vel turpis adjecta: 5. §. 3. 4. (3.) Niſi veriſimiliter conſtet, teſtatorem tranſmiſſionem ejus legati voluiſſe: (9) 30. C. de fideic. (4.) Niſi officio magis (10) ſit relictum, quàm perſonæ e. g. Profeſſoribus. 20. §. 1. de ann. leg. Principi, 56. de leg. 2. ſecus eſt, ſi Auguſto. (11) 57. de leg. 2.

* ſub die * certo omninò, ex tempore mortis: 5. §. 1. h. b.

9. 213. de de V. S. * incerto, qui conditionem * non facit, (12) ex C

tempore mortis: 18. §. 1. de manum. teſt. * facit, (13) exiſtente c.

te eo die 22. pr. Sæpè Legatum purum eſt, ac præſtatio in tempus differtur: tum D

dies ſtatim cedit. 26. §. 1. ſſ. 5. C. h. 46. ad SC. Trebell. (obſ. 46. (14) §. 1. de condit. & demonſtr. Bach.) Perez. h. n. 6. Pari ratione (15) dies etiam cedit in Fideicommiſſo, tam univerſali, quàm particulari. 46. ad SC. Trebell. Gail. 2. O. 131. ☞ Bach. V. 2. D. 14. h. 6. ſh. A. Diſ. Faber. d.

## Notæ variorum.

Quando dies legati cedat? (1) [Cedere diem] Diem legati cedere, quando illud incipit deberi, notat, cum pert [illegible] l. 213. ff. de V. S. Mortuo teſtatore [illegible] [illegible] legata & fideicommiſſa [illegible] [illegible], quibus deſtinaverat, accepturi [illegible] heredes [illegible] quærere [illegible] effectum teſtatoris [illegible] illa recte colliguntur. Lex [illegible] tranſmiſſionem illam ſolùm admiſit in legatis & fideicommiſſis puris [illegible] relictis, ſed quoad legata conditionalia [illegible] conditionem exiſtentem negavit, quod [illegible] tamen ſed illa interpretatio & voluntati teſtatoris repugnare [illegible] parum prudens eſſe videretur, cum [illegible] quandoque [illegible] ſibi [illegible] [illegible] legatum in diem vel ſub conditione relictum ſit, [illegible] l. 40. §. 2. de cond.

Quando cedat? & demonſtr. apparet, hinc [illegible] dubia non [illegible] ſunt [illegible] Tiraqu. Cedit autem dies legato ſemel tantum in legatis ſingulis, [illegible] vero eſt legatum in [illegible] ſingulos relictum. l. 10 ff. h. [illegible] dies [illegible] cedit. l. 12 §. 1. ff. h. [illegible] teſtator heredis [illegible] voluerit. l. 12 §. 4 eod. Effectus eſt, quod cedente vero legato vel fideicommiſſo efficitur, ut illud ad heredem tranſmittatur. l. 5 ff. h. quod ad eum non tranſit, cum dies poſt mortem legatarii [illegible] demum cedit. l. 22 ff. h. l. 10 ff. [illegible] Mornac. Cedere enim dicitur dies, quando legatum vel fideicommiſſum certe fuit, ſi legatum vel fideicommiſſum [illegible] eſſe [illegible]. Venire autem, quando non ſolum de hoc certum eſt, ſed ſimul etiam [illegible] [illegible] legatum petere [illegible].

[illegible]

(2) [illegible]

(3) [illegible]

(4) [illegible]

(5) [illegible]

(6) [illegible]

(7) [illegible]

(8) [illegible]

(9) [illegible]

(10) [illegible]

(11) [illegible]

(12) [illegible]

(13) [illegible]

(14) [illegible]

ſub conditione, ubi *demùm exſtare potuerat*, (2) ubi tempus, ſub quo legatum relictum eſt, ad terminum pervenit, ibi: *ſi mora* [illegible] *Berger*

(15) [*Pars ratione*] Hæc omnia procedunt in legato vel fideicommiſſo *ipſo*. Quoà verò *uſuras* rationes legati aut fideicommiſſi præſtandas attinet, eatenus dies non cedit, niſi à tempore contractæ moræ, i. e. poſtquam heres de præſtando legato aut fideicommiſſo admonitus eſt, v. *Carpz. p.* 2. *c.* 30. *def.* 20. *Bergh.*

# TITULUS III.

## Ut legatorum ſive fideic. ſerv. cauſa cav.

### *Junge L.* 6. *C. tit.* 54.

D Hic caveant legatis & fideicommiſſis onerati, datis fidejuſſoribus (1 *qui ſatisdare coguntur* 7. *de Præt. Stipulat.*) honoratis, ſe relicta, tempore, quo teſtator voluerit, *præſtituros* [1] 1.

C Jubente Prætore. 1. *h.* Cavent * onerati teſtamentarii & legitimi, A

S 15 § *ſ Succedentes* [2] jure civili aut prætorio, 1. §. 1. directè, aut indirectè, 1. §. 7. & heredes eorum. 1. §. 6. cujuſcunque dignitatis aut facultatum, 1 § 1. etiamſi immobilia *poſſideant*: [3] NON etiam *fiſcus*. [4] 1. §. 18. *h.* 2. § *ſ. le fun l.* [illegible] §. 1 *h.*

P * honoratis legatariis & fideicommiſ- B.

ſariis, univerſalibus & particularibus, 14. *pr. h.* 4. *C. ut in poſſ. leg.* 1. §. 3. poſtulantibus hoc ante litem conteſtatam. 1. §. 9.

O Ratione legatorum & fideicommiſſorum *dd. LL.* maximè ſub die aut conditione relictorum: 5. §. 2. *h.* [NON etiam ratione *parentum*, [5] niſi exercitium judicii *moram* [6] habeat, 14. *pr.* 15 *pr.*] quæ veriſimiliter debentur: 5. §. 2. 14. §. 1. *h.* 1. *C. ut in poſſ. leg.*

E Inde datur actio ex ſtipulatu contra fidejuſſorem. *de quo ſuo loco.*

O Prohibitio teſtatoris impedit *hanc cautionem*. [7] 7. *C. de pall.* 2. 7. *C.* 12. *ſ. pr. h.*

### *Notæ variorum.*

(1) [*Præſtituros*] Doloſumque malum præter-miſſuros, *l.* 1. *pr.* & 16. *ff. h.* etiam hodie *Carpz. p.* 3. *c.* 8 *d.* 38. *Mev. p.* 7 *d.* 336. *Menken.*

(2) [*Succedentes*] Hanc cautionem tamen fideicommiſſarii ſibi non præſtant liberi manumiſſi fideicommiſſo gravati, *l.* 6. § 1. *C. ad SC. Trebell. Bergh.*

*Liberi manumiſſi fideicommiſſo gravati non præſtant cautionem.*

(3) [*Poſſideant*] Quia legatarius abſolutè proſpiciendum, ne difficilius reddatur legati perſecutio. Et hæc ad ſi exceptio à regula in *l. ſciendum* 15 *pr. ff. qui ſatisd. cog. Bergh.*

(4) [*Fiſcus*] Quia hic ſemper ſolvendo præſumitur, ſi non actu, tamen *potentiâ*, propter continuos reditus fiſcales. Promittere tamen debet indemnitatem, *l.* 1 §. 2 *h. Bergh.* Quod in fiſco monitum, quoque eſſe obſervatum, meminit *Huber l. Nihil amov. app. contra poſ* 2. Vel *Republica*, quæ ſibi tum repromittit voluntas defuncti inviolatum iri. *l.* 6. § 2. *ff. h. Menken.*

*Fiſcus ſemper ſolvendo præſumitur.*

(5) [*Parentum*] Nec enim eum parendo exacto, Nec accepere cautionem tenetur fideicommiſſarius, etiamſi obtulerit, qui enim ad ſolvendum non obligatus eſt, nec cautione ſe liberare nequit, quia cavere non eſt ſolvere. *Bergh.*

(6) [*Moram*] Si fortè ſuper validitate fideicommiſſi adhuc in judicio diſceptandum. *Bergh.*

(7) [*Hanc cautionem*] Adeo, ut nequidem à diſpoſitore illa exigi poſſit. *l. f. h.* Nam teſtatori liberum erat planè nihil relinquere. Aliud in cautione de re non deteriorandâ, vel alienandâ, hæc enim remiſſio invitaret ad delinquendum. *Bergh.* Ceſſat igitur, *remiſſione cautionis facta* vel à *teſtatore l.* 12 §. *f ff h. ſ l.* 29. *C. d. pall.* ubi cautionem ex errore non præſtitam condicere poteſt heres, *l.* 1. *ff. ut in poſſ.* vel à *legatario expreſsè* vel *tacitè*, e. g. eadem ante litem conteſtatam non petita, *l.* 1. §. 9. *ff. h. Menken.*

# TITVLVS IV.

## Ut in poſſ. legat. vel fideic. ſerv. cauſa eſſe lic.

*Junge L. 6. C. tit. 54.*

S*I per* [illegible] (1) ſiet, quo minus [illegible] cautionem præſtet, tum prætor, [illegible] legata [illegible] honoratum, (etiam re [illegible]) in poſſeſſionem [illegible] *Commun.* [illegible] (2) [illegible] & heredis, poſt [illegible] [illegible] non poſſident, ſed ſunt tantum in poſſeſſione, (3) & habent pignus prætorium, ex quo *neuter alteri præfertur.* [illegible] Heres autem retinet dominium & poſſeſſionem [illegible]. Hodie ha habent tacitam hypothecam. [illegible] *C. Commun. de leg.* unde hæc *ſupervacanea.* (4)

### *Notæ variorum.*

(1) [*Si per* [illegible]] Quod ſi [illegible] [illegible] *hypotheca.* [illegible]

(2) [illegible]

Hæc operatur [illegible] quam hodie hypotheca.

[illegible]



[illegible]

*lege tenib*, *adeò ut hodiernum quando rem ipſam in omnia bona fieri debeat*) *locum habere non poteſt*, & *ubi fieri non tantum effectu*, *ſed & re ipſa ſolùm fit pro quantitate bonorum*. Ex quibus ulterius conſequitur, non eſſe illa, quæ h. t. tractantur *ſupervacua*, ut inconſideratè *Schirtzius hoc in fine*. Licèt enim legatarii & fideicommiſſarii hodie hypothecam tacitam in omnibus bonis defuncti pro ſua ſecuritate conſequendæ habeant; habent tamen *pignus Prætorium ex hoc tit.* ad hunc uſum, (1) quòd miſſio aliquando, lapſis ſc. à petitione ſex menſibus, hoc ſiat in ipſius heredis res, de quo *auctor* noſter notat ex *l. 6. C. h. t.* Sed & (2), hoc pignoris diverſus à tacito ſive legali iſto ſcopus eſt, de quo *Brunn. h. t. ch. 57.* ubi *neque enim, veluti in hypotheca illa tacita, expellendi heredem jus habet* (immiſſus) *ſed ſimul cum eo poſſidere jubetur, ut ſaltem tædio perpetuæ cuſtodiæ extorqueat heredi cautionem, l. 5. pr. h. t. add. Cicero, orat. pro Quint.* Quintio (3) reſcriptum *Divi Marci in l. 5. §. 1. t. grand.* De quo *Huber ff. h. t.* uſum hodieque habere poſſe, neque debere (ſc. ut herede non cavente, eruat fideicommiſſarium pro conſervatione bonorum, & ut ſolus poſſideat. Si nec hic cavere velit, ut tum res deponantur apud tertium, quod ſi nec de tertio convenire poſſit, ut tunc reſtituatur ſolùm in indulgenda illa poſſeſſione ſimultanea) dubitandum non eſt. Denique illud adhuc monere, ideò in ſpecie ad hunc titulum noſtrum (*ut in poſſeſſione legatorum vel fideicommiſſorum ſervandorum cauſa eſſe liceat*) non pertinere poſſe jus *Novellæ* 53. c. 4. §. 1. quæ id tantum locum habet in debitore latitante, contumace, pertinaci. At miſſio ex h. t. locum invenit, etſi per heredem debitorem non ſtet, modo per fideicommiſſarium aut legatarium ſatisfactum non fuerit, *l. 1. §. 1. ff. h. t.* Opp. *l. 2. C. quæ poſt. in pign.* ... per *l. 113. ff. de R. J. Pagenſt. in l.*

(3) [*A petitione*] N. c. 6. poſtquam legatarius immiſſus, heres nihilominus intra 6. menſes non ſatisfaciat, tunc extenditur immiſſio in ipſa heredis bona, ut ex ſingulis ſatisfiat. *Tr. de A. F. J. §. 4. membr. 4. n. 91. Brunn.*

Immiſſio in primo decreto ſolùmq; modum cuſtodiæ.

(4) [*In poſſeſſione*] Fit enim hæc immiſſio tantum ex *primo* decreto, quæ ſolùm cuſtodiam tribuit. *Brunn.*

Sola cuſtodia non tribuit prælationem.

(5) [*Neuter alteri præfertur*] Cum ſola cuſtodia prælationem non tribuat. Quod ſi ergò cum legatariis, licet hi hypothecam habeant, concurrunt chirographarii creditores teſtatoris, hi tamen illis præferuntur. Legata enim præſtantur ex bonis hereditariis, quæ non adſunt, niſi deducto ære alieno, *§. ſ. I. ad L. Falcid. Brunn.*

(6) [*Supervacaneus*] Pignore quidem Prætorio hodie opus non eſt, immiſſio tamen locum habere poteſt, cum tutius ſit inſiſtere rei, quam actione hypothecaria expetere. *Brunn.* Quæ ergò *commiſſio etiam fit in poſſeſſionem bonorum heredis, quæ poſt ſex menſes continuatur*, *l. 5. §. 19. ff. h.* et quo adeunt eſt in nomine Magiſtratus comparandum, *l. 5. §. 26. ff. h.* neque *ſatisdedit*, *neque ſatisfecit legatariis*, *l. 6. C. h.* Itaque *ubi miſſio in primo decreto adhuc frequentatur*, *eadem etiamnum non erat*, nam tacita hypotheca ratione legatorum vel fideicommiſſorum data, *l. 1. C. comm. de legat.* bona heredis non afficit, neque in fideicommiſſis univerſalibus, quibus bonorum miſſionem jure ſuo poſtulat, *l. 4. C. h.* locum invenit, hoc accedit, quod immiſſio in bona heredis fructuum perceptionem immiſſis tribuat, primum uſuris, deinde ſorti imputandorum uſque dum voluntati defuncti fuerit ſatisfactum, *l. 5. §. 16. ff. h. Mev. p. 2. d. 208. n. 3. Brunn. ad l. 5. ff. h. n. 4. 5. Moeckel.*

# LIBER XXXVII.

## TITVLVS I.

### De bonorum poſſeſſionibus.

*Junge l. 6. C. tit. 9. & 10.*

D HÆc Bonorum poſſeſſio interdum ſimpliciter dicitur hereditas, *138. de V. S. ſ. C. qui admitt. ad bon. poſſ.* & bonorum poſſeſſor, *heres:* (1) *19. §. 1. de condit. & demonſtr.* Eſt jus *perſequendi*, (2) *retinendique* (3) patrimonii, ſive rei, quæ cujusque, cum moritur, fuit. *3. §. 2.* S

Cauſſa Remota *eſt Prætor*, (4) *pr. l.* Propinqua *agnitio* (5) & petitio coram judice olim C

olim requirebatur ſolennis, *1. C. comm. de ſucceſſ. 2. §. 1. & §§. ſeq. quis ordo in bon. poſſ.* hodiè ſufficit quævis voluntatis declaratio judicialis, etiam coram magiſtratu municipali. *5. C. qui admitt. ad bon. poſſ.* modò fiat a parentibus & liberis intra annum, a reliquis verò intra *centum dies.* [1] *§. 4. in f. I. h. 1. § 12. de ſucceſſ. Edict.* utiles, *1. de diverſ. & temp. præſcr. 11. §. 5. ad L. Jul. de adult. 2. pr. quis ord. in bon. poſſ. 2. 5. 8. C. qui admitt. ad bon. poſſ.* quales ſunt in Bon. poſſeſſione decretali, *dies ſucceſſorum* [1] Edictali, omnes, quibus judicis copia poteſt *haberi* [1] *2. §. 1. quis ord. in bon. poſſ.* Pupillo nocet ſcientia *tutoris,* [1] *7. §. 2. (obſ. 5.* [1] *de jur. & fact. ignor.) jun. l. 1. de aut. tut.* & filiofamilias infanti ſcientia patris, ſcil. quoad præſcriptionem *7. §. 3. [Obſ. 1. de bon. poſſ. furioſ. 3. quis ordo in poſſ.]* facta (etiam per Syndicum, *3. §. 4.* Procuratorem, *3. §. 7.* (abſque ſpeciali mandato, & ſufficit ratihabitio. *3. §. 7.*) terminata, 7. pr. tutorem. *7. §. 1. vid. 5.*

A *C. de jur. deliberan.*) ab eo, cui delata, quique *non* * *impeditur,* [1] ut furioſus, *1. de bon. poſſ. furioſ.* (hujus curator agnoſcit. *d. L. 1*) infans, *d. l. 1.* (*cujus Pater* [1] aut tutor *agnoſcit* [1] *d. l. 1.*) *non etiam mutus* [1] & ſurdus, modò intelligat, quod agit. *2. d. t.*

a * prohibetur, ut pubillus ſine tut. autoritate. *7. §. 1.* (magiſtratus tamen eam *ſupplere poteſt* [1] *7. C. qui admitt. ad bon. poſſ.*) minores curatorem habentes. *arg. 5. C. de in integr. reſt.*

O Patrimonium defuncti, *3. §. 1.* etiam *ſpe tantum* [1] delatum, *in f. C. h. Rauh. V. 2. D. 15. th. 6. lit. A. l. 6. de B. p. ſec. tab.*

E Bonorum poſſeſſor fit defuncti ſucceſſor, & effectu parum ab herede *differt:* [1] *2. h. 117. de R. I. 24. §. 1. fam. erciſc.* Habet jus in * univerſitate, cujus vi competit exceptio ad bon. poſſ. retinendam, & actio ad perſequendam, & Remedia poſſeſſoria, & petitoria, *1. §. 1. quorum bon.* & hereditatis petitio poſſeſſoria. *de qua ſupr. lib. 5. tit. 5.* B

* Rebus ſingularibus, idem b.

C quod heres, *14. ad SC. Velley.* & dominium. *1. 3. pr. h.* Excludit eam repudiatio, *3. §. 3.* etiam *tutoris* [1] *obſ. 8.* [1] *h. 1. §. 4. d. ſucc. Ed.* modò prævia deliberatione propter utilitatem pupilli id fiat. *11. de aut. tut. Rauh. V. 2. D. 5. th. f. lit. G.*

Eſt vel (1) * *DECRETALIS* [20] ſive extraordinaria, quæ datur regulariter *ex* C

D *decreto,* [1] cum cauſæ cognitione, pro tribunali: *2. §. 1. quis ord. in b. poſſ.* e. g. *Carboniano,* [1] *ventris nomine* [1] *Vid. tamen* [1] *1. §. 14. 16. l. 7. §. 1. de ventr. in poſſ.*

* *EDICTALIS* [1] (*Vid. 3. §. 14. & ſeq. de Carbon. Edict. 1. 5. §. 2. de leg. præſt. 1. §. 4. unde lib. 2. §. 1. quis ord. in b. poſſ. 1. §. 7. de ſucc. eſſ. Edict.* ubi dicitur, quod hæ c.

D ſpecie differant) ſive ordinaria. *3. §. 14. 15. de Carbon. Edict.* eſt, quæ regulariter *ex edicto* [1] ſine cauſæ cognitione de plano petitur, atque acquiritur *2. §. 1. quis ord. in poſſ. vid. tamen Struv.* [17] *h. th. 8.* Hæc iterum eſt * extraordinaria, quæ D

ex novis LL. & non certis perſonis, nec certo ordine, ſed prout *res contingit,* [1] aut æquitas ſuadet, conceditur *§. 3 I. h. Exempla* [1] ſunt in *24. de A. v. O. H. 18. C. de jur. delib. 4. § f. L. 5. de bon poſſ. contra tab.* * ordinaria, quæ ex d.

certa Edicti parte, certis perſonis, certò ordine, conceditur. & * facto teſtamento E

† datur bon. poſſeſſio *contra tab.* [1] & *ſecundum tabb.* [1] *§. 1. I.* * non facto teſtamento, datur bonorum poſſ. *unde liberi,* [1] *unde legitimi,* [1] unde cognati, unde e.

vir & uxor.

(2.) *Cum re,* [1] *de qua hactenus.* vel ſine re, quam Prætor concedit illi, *cui potiori ex jure* [1] alius hereditatem aufert. & dicitur ſine re, quaſi *ſine effectu* [1] utilitate &c. *Vid. 1. §. 4. unde lib. 12. de injuſt. rupt. 2. C. de inoff. teſt.*

*Nota*

## Notæ variorum.

[illegible]

[illegible]

[illegible]

[illegible]

(21, (In Decreto,) [illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

# *TITVLVS II.*

## Si tabulæ teſtamenti extabunt.

Si exiſtunt quidem tabulæ, ſed *invalidæ*, (1) perinde eſt, ac ſi *non exiſterent*: (2) Si verò non exiſtunt, *publicatæ* (3) tamen ſint, perinde eſt, ac ſi exiſterent.

### *Notæ variorum.*

(1) [*Invalidæ*] Requiritur, ut etiam jure prætorio ſint invalidæ, e. g. ut ſignacula non adſint. *Stryk.*

Paria ſunt in jure plane non fieri, & non legitime fieri.

(2) [*Non exiſterent*] Quia paria ſunt in jure: Planè non fieri, & ſaltem non legitimè fieri. *Stryk.*

(3) [*Publicatæ*] Etiam non ſolenniter; Nam ſi publicatio fuiſſet ſolennis, ipſum teſtamentum accepiſſet naturam publici inſtrumenti, & ſic non opus foret ad beneficium Prætoris recurrere, ſed jure directo peti poſſet hereditas. *Stryk.* Si quid delictum ſit in teſtamento, an b. poſſeſſio competat? R. N. quia Prætor juſtam habet dubitandi caſum, an heres ſit ſcriptus, nec ne. Niſi ex benigna interpretatione defuncti voluntatis, ſi prolatis ſemel publicatiſque integræ tabulæ interierant, vel in iis aliquid deletum, tunc enim bonorum poſſeſſio competit. *l. un. h. l. 3 C. de inoff. teſtament. Struv. Ex. 37. th. 13. Menchen.*

# *TITVLVS III.*

## De bon. poſſ. furioſ. infant. mut. ſurd. cæco comp.

Cum tempus bon. poſſ. ſit utile, *10. de bon. poſſ.* inde non currit *furioſo* (1) &c.

### *Notæ variorum*

(1) [*Furioſo*] Aliiſque qui neſciunt, quid agant. Non valenti enim agere nulla currit præſcriptio.

Non valenti agere nulla currit præſcriptio.

E contra mutus, ſurdus & cæcus, quia intelligunt, quid agunt, ipſi agnoſcere debent bonorum poſſeſſionem, *l. 2 ff. h. t. Tr. d. J. S D. 2. c. 3. num. 51. Stryk.* Hoc tamen non impedit, quo minus furioſi & infantis pater tutorve bonorum poſſeſſionem, quam lucroſa futura eſt agnoſcat, *l. 5. §. 3. C. d. curat. fur. l. 7. §. 2. ff. d. bonor. poſſ.* Interim cedit tempus, muto, ſurdo, cæco, qui id, quod agitur, intelligunt. *l. 2. ff. h. Menchen.*

# *TITULUS IV.*

## De bon. poſſ. contr. tab.

### *Junge L. 6 C. tit 12. & 13.*

Contra tabulas poſſeſſio datur (1.) Liberis, *ut hic* (2.) Parentibus *tit. 12. h.* D
(3.) Patronis, *tit. 14. h.* Hic eſt, quæ datur liberis, contra teſtamentum patris, in quo ipſi præteriti ſunt, ad patrimonium ejus conſequendum: idem eſt, ſi non ritè *exheredatis*: (1) *1. §. 2. 1. 8. pr. h. §. 9. de exhered. lib. 5. §. 12. h.* Iniquè tantùm exheredatis datur querela in officioſi. *1. pr.*

Datur Liberis primi vel ſecundi gradus. 3. & principaliter quidem *emancipatis*, (2) *§. 3. de exhered. lib. 1. §. 6. 3. princ. h.* per extenſionem poſtmodum etiam *ſuis*, (3) *f. C. h. §. 1. 2. I. de her. quæ ab inteſt.* & beneficio præteritorum etiam inſtitutis, *3. §. 11. 10. §. 5. licet* (4) præteriti *agnoſcant* (5) voluntatem defuncti. *10. §. 6.* [*Obſ. 3. §. 11.*] (6) *Bach. V. 2. D. 15. th. 3. l. A. 14. de legat. præſtand.* Non etiam beneficio præteritorum datur *exheredatis.* (7) *10. §. 5. h.* S

Con-

[illegible] bonis petit, non matris, ... nam hujus [illegible] ... est pro [illegible] ... tab. ... O

A [illegible] teſtamentum * omnino ... & liberi ... ejus patrimonium. 1

## *Notæ variorum.*

[illegible]

# *TITULUS V.*

# De legat. præſt. contra tab. bon. poſſ. petita.

* Q[illegible] ... teſt[illegible] ... legata debentur, ... liberis, ... omnibus, ... [illegible]

[illegible]. (1) modò emancipati ſint præteriti, ſecus eſt, ſi ſui: nam tum *non debent*. (2) [illegible] *pr. quidam putant*, (4) etiam quoad emancipatos mutatum *Nov. 115. cap. 3.* ſed textus potius contrarium probat, nam loquitur de *præteritione matris*. (5)

## *Notæ variorum*.

[illegible] bonorum poſſeſſione [illegible] legato [illegible] [illegible]

(1) [*Quibuſdam perſonis*] [illegible] [illegible], ut [illegible] [illegible], [illegible] *ſubſtitutionibus pupillaribus*, *l. 34. § 1.* [illegible] [illegible] [illegible] [illegible]. [illegible] [illegible] *Nov. 115. c. 3.* [illegible] [illegible] [illegible] bonorum poſſeſſionem non [illegible]. [illegible] *ad ff. lib. 37. tit. 5.* [illegible] [illegible] [illegible], [illegible] *Carpz.* [illegible] [illegible], [illegible] legata [illegible], *& l. 27. C. de teſtam.* [illegible] [illegible] [illegible] legata [illegible], [illegible] bonorum poſſeſſione, [illegible] heredum [illegible] habetur. *l. 15. ff. h.* [illegible].

[illegible] legatum dotis [illegible]

(2) [*Reſpectu dotis*] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]. *Ad* [illegible] *l. 1. C. de bon. poſſ. contra tab.* [illegible] [illegible] *& liberos* [illegible] legatis in genere quibuſcunque, [illegible] liberis & parentibus [illegible], [illegible] *legata*. Quod [illegible] legatum [illegible], [illegible] [illegible] dum, quæ non ſunt [illegible], *l. 8. § 5. h. Berger.*

(3) [*Non debent*] Quia horum præteritio [illegible] teſtamentum facit nullum [illegible]. *Bergh.*

(4) [*Quidam putant*] [illegible] [illegible], [illegible] [illegible] eſt quod per [illegible] [illegible] [illegible] [illegible] emancipati liberi vel cum exceptione [illegible] [illegible] vel non. [illegible] [illegible] [illegible], hoc verò teſtamentum quoad [illegible] eſt nullum, ac adeò [illegible] [illegible] evertetur, hinc bonorum poſſeſſio contra tabulas amplius haud neceſſaria. *Titius*

(5) [*Præteritione matris*] [illegible] [illegible] ad præteritionem maternam [illegible], ſed ſimpliciter de [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible], [illegible] vel teſtamento vel [illegible], [illegible] [illegible] eſt, [illegible] [illegible] præteriverit liberos, legata [illegible]. [illegible] [illegible] legatarum [illegible] perſonæ [illegible] [illegible]: Unde [illegible] [illegible] [illegible] *Bergh.*

# TITULUS VI. & VII.

## De collatione. De dotis collatione.

*Junge L. 6. C. tit. 20.*

D COLLATIO (1) hic eſt actus, quo coheredes deſcendentes aſcendentibus ſuc-
† cedentes, res, quas ab ipſis vivis acceperant, in comm. hereditatem conferunt.
† Eſt (1) Generalis ſive omnium bonorum, exceptâ dote, & Specia-
lis, ſive dotis. (2.) * *Realis*. (3) *1. §. 11. 15.* * vera, qua res actualiter con- A
feruntur: *1. §. 11.* hæc regulariter *requiritur*. (3) *vid. infra O.* * quaſi, quæ per fictionem
juris fieri intelligitur, *1. §. 1. de dot. collat. 1. §. 12.*

* Cautionalis, quæ quis datis fidejuſſoribus vel pigno- a
ribus cavet de re conferenda ſcil. quando *non ſtat* (4) quid, quale, quantum ſit conferendum. *1. §. 9. & 11. h.*

C Introducta *a Prætore*, (5) *1. pr. propter. 1. pr. & §. 5. h.* confirmata & *reformata*. (6) *N. 18. c. 6. N. 97. c. 6. & 17. C. h.*

S Conferunt perſonæ, quibus hoc *injunctum*. (7) *19. verſ. in, quod nulla C. h. arg. 11. de R. I. Arum. p. 2. dec. 8. n. 38.* coheredes. *l. 4. 7. 17. C.* non etiam qui heredes non ſunt. e.
g. ſi contenti ſint (1.) ſilia dote, *10. C. h. 25. C. famil. erciſc.* [quæ hoc in caſu etiam
pro-

promissam tantum arg. l. [illegible] f. de dot. collat.] Si tamen propterea reliqui non habent legitimam, agunt quer. [illegible] inofficiosæ dotis ad supplementum legitimæ l. [illegible] C. de in-off. dot. (2) huic emancipato donat one propter nuptias, aut legato aliquo [illegible] §. [illegible] l. [illegible] h.) Olim tantum ab intestato, [illegible] C. h. f. C. comm. utr. jud. propter [illegible] §. 1. famil. erciſc. hodiè etiam ex testamento [illegible] Nov. 18. c. 6.

* Deſcendentes, qui ſuccedunt, & quidem * Olim emancipati, qui per B.P. contra tab. vel unde liberi ad adſcendentium hereditatem admiſſi, conferebant tantum ſuis; non etiam ſui ſuis, nec emancipatis, nec emancipati emancipatis. propter [illegible] §. [illegible] l. [illegible] h. Poſteà etiam filiæ in poteſtate dotem conferre debebant; [illegible] de dot. collat. B C

c. * Novo jure omnes deſcendentes[11] ſive concurrant ſoli ſui, ſive emancipati, ſive utrique, [illegible] C. N. 18. c. 6 cujuſcunque gradus aut ſexus, etiam matri ſuccedentes: [illegible] C. h. Conferunt etiam nepotes,[12] quæ parentes eorum acceperunt,[13] [illegible] C. ſive ſoli ſive cum propriis [illegible][14] ſuccedunt, niſi repudient, e. g. paternam hereditatem, retentâ avitâ, [illegible] Carpz. [illegible] rectius tamen limita, ſi jure repræſentationis * ſuccedunt, [illegible] §. [illegible] & [illegible] de ſuis & legit. [illegible] Carpz. [illegible] §. [illegible] de her. quæ ab inteſt.

b. * non etiam * aſcendentes,[15] [illegible] nec novò jure Carpz. [illegible]

D inſ. * nec collaterales,[16] nec extranei, [illegible] C. comm. utr. jud. [illegible]

d. Carpz.[17] [illegible]

E * Olim conferebantur omnia, quæ præter caſtrenſia & quaſi caſtrenſia adveniebant: [illegible] §. [illegible] h. O

e. Hodie ea tantum, quæ acceperunt (1.) a parentibus,[18] quibus ſuccedunt, [illegible] & f. eod. ſeu quod intuitu parentum ipſis obvenit: [illegible] §. [illegible] de [illegible] §. [illegible] O. H. [illegible] h. [illegible] §. [illegible] de vulg. & pup. ſubſt.) (2.) vivis,[illegible] C. (non etiam e. g. mortis cauſa donata. [illegible] C.) (3.) & mortis tempore adhuc in bonis habent,[illegible] C. [illegible] §. [illegible] f. de dot. collat. niſi dolo vel culpa[illegible] deſierunt poſſidere, [illegible] §. [illegible] h. vel eam e. g. permutaverunt, tum enim aliam, vel æſtimationem conferunt. [illegible] Diſtingue tamen an res illæ ſint * ca-

F ſtrenſes * verè [illegible] C. de caſtr. pec. & hæ ſemper ſunt liberæ [illegible] C. h.

* quaſi [illegible] C. de advocat. [illegible] hæ etiam non conferuntur, [illegible] nec ſim-

f tus Doctoratus.[illegible] Ludov. [illegible] C. h. [illegible] §. [illegible] h. * pa-

ganica, & tum ſi datæ ſint (1.) animo liberalitatis,[illegible] non conferuntur [illegible] C. h. [illegible] C. famil. erciſc. [illegible] (2.) propter nuptias donatio regulariter confertur, [illegible] de dot. collat. [illegible] C. h. Item dos,[illegible] Ad. LL. neceſſariæ impenſæ tamen deducuntur [illegible] de dot. collat. [illegible] de impenſ. in res dot. licet promiſſa[illegible] tantum ſit, [illegible] de dot. collatione non etiam uſuræ, niſi moroſa fuerit in collatione. [illegible] de dot. collatione conſtante matrimonio [illegible] tantum confertur. [illegible] C. Idem eſt in aliis rebus filiæ nuptiarum[illegible] tempore datis, Auth. Ex teſt. C. h. Carpz. [illegible] & [illegible] Sic filius, quam a patre accepit, arrham ſponſalitiam confert. Carpz. [illegible] quod tamen de jure civ. rectius negatur[illegible] arg. [illegible] C. (3.) ex ſingulari pietate e. g. redemtio captivi, non confertur: [illegible] C. de poſtlim. Carpz. [illegible] (4) ob bene merita ad remunerationem[illegible] non confertur: Brunnem. de collat. [illegible] (5.) ob adminiſtrationem ſolam, ut peculium profectitium, confertur tantum quoad poſſeſſionem, nam dominium antea eſt in hereditate. [illegible] C. h. Et quidem ipſum eſt conferendum.[illegible] [illegible] C. h. [illegible] §. 1. de B. C. Carpz. [illegible]

Po-

5 Petitur implor[illegible] officio [illegible], qui compellit [illegible] primò per mandatum, [illegible] & contestationes [illegible] actiones hereditarias [illegible] [illegible] collatione [illegible] &c.

6 Impedimentum Præcedentiam [illegible] item Prohibente [illegible] assentientium, [illegible] licet tantum per verba [illegible]

## Notæ variorum.

(1) [illegible]

(2) [illegible]

(3) [illegible]

(4) [illegible]

(5) [illegible]

(6) [illegible]

(7) [illegible]

(8) [illegible]

(9) [illegible]

(9) [illegible]

(10) [illegible]

(11) [illegible]

(12) [illegible]

(13) [illegible]

(14) [illegible]

(15) [illegible]

(16) [illegible]

(17) [illegible]

(18) [illegible]

(19) [illegible]

[illegible]

(22) [illegible] Regula generalis est [illegible]

[illegible]

(23) [illegible]

(24) [illegible]

(25) [illegible]

(26) [illegible]

(26) [illegible]

[illegible]

(33) [*ad contemplationem*] [illegible]

(34) Conferendo [illegible]

(35) [illegible]

(36) [illegible]

(37) [*Hereditarem*] [illegible]

(38) [illegible]

[illegible]

(39) [illegible]

(40) [illegible]

## TIT. VII.

Collatio dotis est actio, [illegible]

[illegible]

*Contra l. 5. c. 7[illegible]* hanc etiam licet bene collationem prohibere, *Nov. 18. c. 6.* (3) *cum maritus*, qui dotem ſuſcepit, *ſolvendo non eſt, nec mulieri imputari poteſt culpa*, cur eandem à marito ad inopiam vergente, *non exegerit*. Tum igitur eadem actionem adverſus maritum confert, *Nov. 97. c. 6. Mencken.*

# TITULUS IIX.

## De conjungend. cum emanc. lib. ejus.

Hic conjungit prætor *emancipatos*, [1] & liberos ex his natos, in avi poteſtate retentos, ut bona avi inter illos dividerentur. Hodiè hoc uſum non habet, (cum emancipati æquè ac ſui ſuccedant) ſc. quo ad jus ſuccedendi; ſecus eſt adhuedum quoad *modum* [2] ſuccedendi. *N. 118.*

### *Notæ variorum.*

Emancipati etiam à propriis liberis, in poteſtate avi remanſis, excludebantur.

(1) [*Emancipatos*] Hi alioquin Jure Civili excludebantur à propriis liberis, qui in poteſtate avi remanſerant; Prætor verò hos conjunctim vocat; Jure novo tamen ſoli filii emancipati ſuccedunt, excluſis liberis ex ſe natis, nam in poteſtate avi ſunt conſtituti. Quia ad hos non devolvitur ſucceſſio, niſi per filium, ergo filii conditio potior eſt; Hoc tamen certum, poſſe adhuc hodie filium & nepotem à patre ſimul heredes inſtitui. *Berg.*

Sui ipſo jure heredes ſunt.

(2) [*Modum*] *Sui* enim adhuc hodie *ipſo jure* heredes ſunt, & ſic hereditatem etiam non aditam tranſmittunt; Quod ſecus in *emancipatis*, qui adeundo demum heredes fiunt, & hanc hereditatem non aditam regulariter non tranſmittunt. *Berg.* Differentia tamen illa ex *Nov. 118.* non probatur, & cum *Juſtinianus*, neglecto juris veteris utriuſque ſucceſſionem liberorum ſimpliciter naturali attemperare ſtuduerit, cur non ex ejus affectu, liberos ſuos & emancipatos, non tantum quoad *jus*, ſed & *modum ſuccedendi* exæquatos dicamus, maximè cum veteris utriuſque ſubtilitates, quæ circa aditionem & tranſmiſſionem occurrunt, & voluntati morientium & æquitati repugnent, adeoque vel ex monitu *l. 168. ff. de R. J.* capienda ſit occaſio, quæ benigniorem præbeat reſponſum, ac etiam ſublatas dicat? *Titius.*

# TITULUS IX.

## De ventre in poſſ. mitt. & de curat. ejus.

D Hæc miſſio eſt auxilium prætoris, quo ventrem præteritum mittit in poſſeſſionem bonorum defuncti.

S Mittitur uxor vel nurus defuncti, (ſi verò conſtet uxorem &c. non eſſe, tum denegatur immiſſio. *l. §. 14.*) prægnans, tempore mortis mariti, & quo petit miſſionem, *1. §. 1. h.* cujus venter eſt præteritus, *l. §. 2.* vel *hodie exheredatus*, [3] *arg. N. 115. c. 3. §§.* quique, ſi editus fuerit, ex aliqua Edicti parte *ſucceſſurus ſit* [4] defuncto. *f. h.*

E Ventre in poſſ. miſſo *curator ventris* [5] conſtituitur, qui interim bona adminiſtrat, omniaſque præſtat uxori, ſine quibus partus ſalvus eſſe non poteſt: *1. §. 19.* Servis etiam uxoris alimenta debentur: *4. §. 1. h.* tamdiu uxor eſt in poſſeſſione, donec partus edatur, aut certum ſit, ipſam non eſſe prægnantem: *1. §. 27. h.* tum enim ſi per calumniam hoc ſimulaverit, etiam ad uſuras expenſarum tenetur, *1. §. f.* ſi verò bona fide ſe putavit eſſe prægnantem, tum fructus perceptos non reſtituit. *5. h.*

*Poſthumo alieno* [6] herede inſtituto, venter non ita mittitur in B. Poſſ. niſi uxor prægnans aliunde ali non poſſit *4. h.*

Notæ

## *Notæ variorum.*

Hujus tituli uſus. Titulus hic hodie quam maxime neceſſarius eſt, ſi Vaſallus deceſſerit relicta uxore prægnante, ubi interest mittere in feudum, donec partum ediderit, quod ſi vero filiam edat, diſcedere ex feudo compellitur, *Diſſ. de Ventre mittendo* [illegible] *Struv.* [illegible] ad hereditatem probabiliter jus habent, etſi tamen contradictor, tum committitur [illegible] [illegible] ſubjungitur, quo casu [illegible], ut utrique proſpectum ſit, ex hoc apud *Romanos* [illegible] illa, quo venter, vel ſive [illegible], [illegible] [illegible] [illegible] ſtatuerat, qua hodie etiam uſum habent in [illegible] colitur, ſed non ſunt hæc *Romana*, verum *Juris Germani.* *Titius.*

(1) [*Nodus exheredatus*] Non poterit hodie cum effectu exheredari, quia poſthumus etiam eſt capax legis tuendus. *Struv.* [illegible] ſive etiam poſthumo exheredato quicquam [illegible] tribuas, quod dubio procul *Auctor* ex ſua hypotheſi vult, eo caſu quo exheredatio nominatim facta, ſive in genere, inter ſeniores [illegible], tunc [illegible] ipſo jure nullum facit, utrumque tamen caſu ſucceſſio nuru eſt certa, hinc merito etiam venter in poſſeſſionem mittitur, & in genere creditorem, [illegible] pars utrique, de quibus in l. 5. §. 2. h. t. hodie non attenda, ſed in [illegible] neceſſitate [illegible] longius eſſe obſervandum. *Tit.*

(2) [*In utero ſit*] Id quod in utero eſt, [illegible] inter ſuos heredes, ſit futurum, l. 1. §. 2. ff. h. [illegible] hodie magnopere non attenditur, cum etiam emancipati ſuccedunt, ex *Nov.* 118. c. 1. [illegible] [illegible] à ventre qui mittitur, cinge [illegible], *Carp.* [illegible] 17 *d.* 21. *Menochius.*

(3) [*Curator ventris*] Eligendus idoneus & vir bonus, l. 1. §. 23. h. idemque à Magiſtratu confirmandus. arg. R. I. d. A. 1577. l. 32. §. 2. l. 1. §. 22. ff. h. quod obſervatum [illegible] [illegible] ad adminiſtrandum l. 5. §. 1. ff. h. & ad alimentorum præſtationem neceſſaria erogandum. l. 1. §. 20. ff. h. alimenta ſumenda etiam locupleti l. 5. ff. h. [illegible] quibus ſervi [illegible] & ad partum uſque producantur. l. 1. §. 19. ff. h. pro facultatibus defuncti & pro dignitate ejus atque mulieris. d. §. Quomodo apud *Romanos* videtur non ſolum prægnans in poſſeſſionem mitti, ſed etiam ſi tantum poſſit videri. l. 25. ff. h. *Menochius.*

(4) [*Poſthumo alieno*] Sc. ex filio emancipato, ſed cum poſt *Nov.* 115. c. 3. hic idem jus ex [illegible] [illegible] habent, quod poſthumus ex filio ſuo patrem per [illegible] hunc ſuccurrendum putem. Imo hodie omnis poſthumus capax eſt ventris, quia ſibi capax [illegible] regulariter [illegible]. *Struv.*

Poſthumus cum effectu exheredari nequit.

A ventre [illegible] [illegible].

Sed eorundem confirmatione [illegible].

# *TITULUS X.*

# De Carboniano edicto.

### *Junge L. 6. C. t. 17.*

Hic conceditur B. P. quæ cum cauſæ cognitione liberis impuberibus, quibus *quæſtio ſtatus*. (1) fuit mota, decernitur. 3. §. 4. ſ. D

Impuberibus, (nam ſi puberibus ſtatus quæſtio mota, illi non mittuntur, antequam præjudicialis quæſtio fuerit *peracta* (2) 3. §. 5.) quibus S controverſia ſtatus movetur. 1. pr. Hi mittuntur, uti dictum in D. modò non per *calumniam* (3) petant, 3. §. 4. & quæſtio ſtatus differtur in pubertatem: modò impuberis *non interſit*, (4) hanc quæſtionem prius tractari: 3. §. 5. debet etiam *impubes cavere* (5) de bonis reſtituendis, ſi appareat ſe filium vel juſtum non eſſe: 1. C. h. quod ſi non fiat, tum *non etiam* (6) adverſarius mittitur, 1. §. 1. cui cavendi, ſoli adminiſtratio conceditur, hoc vero etiam nolente cavere conſtituitur curator bonorum, qui interim adminiſtrat, ac alimenta *præſtat* (7) pupillo, non etiam ejus adverſario. 5. §. 1. & 2. L. 6. §. 4. 5. h.

## *Notæ variorum.*

(1) [*Quæſtio ſtatus*] Sive *filiationis*. *Struv.*

(2) [*Peracta*] Nec eſt ubi pubes legitimus ſit poſſit, ipſi alimenta non debentur. *Struv.*

(3) [*Per calumniam*] Præſumptionem ergo aliquam probabilem impubes pro ſe allegare debet, ſi hanc bonorum poſſeſſionem petere velit, vid. *Tr.*

Hoc edicto ſuccurritur impuberibus, modo non

[illegible]

*Tract. [illegible] Deſſert 9. cap. 7 § 16. Brunn.*

(4) [*Non concepit*] Sc. quod non in promptu ſint teſtes, ſed ſenio confecti, qui fortè poſt pubertatem non amplius viverent. *Brunn.*

[illegible]

(5) [*Impubes agnatio*] De bonis reſtituendis, ſi appareat ſe filium vel puberem non eſſe *l. 2. C. h. t.* [illegible] heredem uſque ad pubertatem. [illegible] *Mornac.*

(6) [*Una eadem*] Adde hoc exemplum Compenſationis vel *Diſſ. de Compenſatione* [illegible] *Brunn.* Caeterum hæc bonorum poſſeſſio tamen hodie nulla eſſe poteſt, ſi impubes præteritus, aut in cauſa [illegible] pro ſuo habetur, *l. 3 ff. h.* [illegible] eſſe [illegible]. [illegible] *Mornac.*

(7) [*Probat*] In quo ſingulare [illegible] pupilli [illegible]. *Brunn.*

# TITULUS XI.
## De bon. poſſ. ſecundum tabulas.

*Junge L. 6. C. t. 11.*

A **H**æc eſt bon. poſſeſſio Edictalis, in Teſtamento inſtitutis conceſſa. D

Prætor concedit eam, juris civilis * *adjuvandi* (1) gratia illis, qui in C teſtamento quidem inſtituti erant, juris tamen ſubtilitate heredes eſſe non poterant, e. g. poſthumo alieno *pr. I. h. Exempla vide* (2) *in L. 12. 17. de injuſt. rupt. 3. §. f. 4. ad SCt. Silan. 4. § f. 1 de B. P. contra tabb. 12. de Carb. Edict. 14. C. de Jur. delib.* aut heredi ſub conditione inſtituto, pendente conditione: *2. §. 1. 5. 10. h. t. 3. §. 12. de bon. poſſ. contr. tab. 23. d. H. J. Bach. Vol. 2. D. 15 th. 4. lit. B.*

* *confirmandi* (3) gratia, reliquis a omnibus ex utilitate, & quidem directam ſcriptis, utilem verò nuncupatis. *8. §. f. h. t. f. l. f. C. de codicill. f. C. qui admi. ad B. P.*

### Notæ variorum.

[illegible]

(1) [*Adjuvandi*] E. g. heredi ſub conditione inſtituto eadem pendente, *l. 2. § 1. l. 5 ff. h. t.* quod tamen hodie obſolevit. *Hopp. ad I. d. bon. poſſ. § 2.* [illegible] *Mornac.* Hodie bonorum poſſeſſionem ſecundum tabb. nullo caſu neceſſariam putem, nam et [illegible] ſublata [illegible] eſt contra, quam, ſucceſſione ſimpliciter naturali magis [illegible], hodie receptam eſſe, nulla probabili ratione [illegible] poſſe videtur. *Titius.*

(2) [*Exempla vide*] In *l. 12.* caſus eſt, ſi poſthumus præteritus, ſed ante teſtatorem natum deceſſerit, ubi jure civili ruptum teſtamentum, ſc. per ſolam agnationem, quæ ruptura non purgatur per mortem ſubſequentem, niſi novum aliquod teſtamentum condatur. Prætor tamen, quia filium præteritum vel non amplius adeſt, vel ſucceſſionem non deſiderat, hoc ſuccurrit. In *l. 17* caſus eſt, ſi filius præteritus, ſed teſtamentum nolit impugnare. Sed et aliud caſus eſt in *l. 1. § 6. ff. h. t.* Si duo teſtamenta eodem tempore facta, & ſignata, nec appareat, quodnam prius, quodnam poſterius, ubi Prætor ex utroque teſtamento dat bonorum poſſeſſionem, quaſi unum teſtamentum eſſet: cum tamen jure civili neutrum ex his ſubſiſteret, quia non conſtat, quodnam poſterius. Hodie quoque prodeſt [illegible]. (1) quando poſthumus, [illegible] ruptum eſt teſtamentum, vivo teſtatore moritur, *l. 12 ff. d. inj. rupt. irr.* (2) quando heres ſub conditione eſt validè inſtitutus, & conditio pendet, *l. 5. l. 6. ff. d. bon. poſſ. ſec. tab. Schilt. ad ff. Ex. 38. § 157.* (3) ſi teſtamentum capitis deminutione, e. g. [illegible] factum eſt irritum & teſtator mortis tempore non eſſet amplius capite minutus, *l. 6. § 12. ff. d. inj. rupt. irr.* [illegible] (4) cum filius in poteſtate patris conſtitutus eſt præteritus, ſed teſtamentum non impugnat, *l. 17. ff.* [illegible] *C. Ed. 10.* [illegible] *Ex. 38 th. 43. Titius.*

(3) [*Confirmandi*] Sc. bonorum poſſeſſio directa in ſcriptis [illegible] & nuncupativo teſtamento [illegible], *a. l. 8. § 1. ff. de jur. codicill. Mornac.*

TI-

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# TITULUS XII.

## Si à parente quis manum. ſit.

Prætor hic dabat bon. poſſeſſ. *parentibus*, (1) adverſus teſtamentum liberorum emancipatorum, ad Exemplum patronorum. Hodiè hujus tit. *nullus uſus* (2)

### *Notæ variorum.*

Hujus tituli nullus eſt uſus.

(1) [*Parentibus*] Hæc bonorum poſſeſſio eſt contra tabulas quæ *parenti* præterito ad exemplum *patroni* adverſus teſtamentum filii datur ad tertiam hereditatis partem heredi avocandam, *l. 1. pr. §. f. ff. h. t. j. §. 3. J. de ſucceſſ. libert.* Hæc ex quavis emancipatione ſecundum jus novum competit, *l. f. C. de emancip. liber.* Hodie *apud nos nunquam erat uſus* cum multo pinguior ſit querela nullitatis patri competens ex *p. 3. C. Zl. 9. Schulz. ad ff. Ex. 41. §. 32. Mencken.*

(2) [*Nullus uſus*] Sed teſtamentum eſt nullum, cum & liberi emancipati parentes inſtituere vel exheredare teneantur. *Nov. 115. c. 14. Mencken.*

# TITULUS XIII.

## De bon. poſſ. ex teſtam. milit.

Hoc ſingulare eſt, quod detur poſſeſſio ſecundum *teſtamentum militis*, (1) non autem *contra illud.* (2)

### *Notæ variorum.*

Non contra, ſed ſecundum teſtamentum militis ſucceſſio datur.

(1) [*Teſtamentum militis*] Sive teſtati ſint milites veri vel ficti, ut in hoſtico deprehenſi, quibus communicata eſt privilegiata teſtamenti factio, *l. un. ff. h. Mencken.*

(2) [*Contra illud*] Cum enim teſtamentum militis jure communi ita privilegiatum ſit, ut quocunque modo valeat, Prætor contra illud ſuccurrere non potuit. Imo miles filium planè præterire, & ſine cauſa exheredare poteſt. *arg. §.* Filii præteriti à milite pro exheredatis habentur, *§. 6. J. de exher. liber.* etiam jure novo; nam *N.* 115. *c.* 4. non abolet privilegium militare, *a. l. 15. §. 26. ff. d. injur. Schulter. ad ff. Ex. 41. §. 35. Mencken.*

# TITVLVS XIV.

## De jure patronatus.

### *Junge L. 6. C. tit. 13.*

De *Jure patronatus*, (1) *Vid. Finkelth. de jur. patronat. c. 1. Cz. lib. 1. tit. 2. d. 3. & ſeqq.* hic ſignificat Jus, quod ex manumiſſione, vel ejus occaſione acqui-
D ritur manumittenti, *in perſona vel bona* (2) manumiſſi, non ſolum ſervi pro-
D prii, ſed & alieni, eâ conditione legati, ut manumittatur. *3. h.* Hoc remittit interdum patronus, non tamen cenſetur reverentia etiam remiſſa, nec actio *ingrati.* (3) *3. C. d. bon. libert.* Amittit, qui negligit libertum *alere* (4) &c. *5. §. 1. &c.* Liberis tamen ſalvum eſt hoc jus ex benignitate, licet pater ſit perduellionis reus. 4.
*Oritur* (5) inde querela adverſus ingratum: *5. §. 1. l. 7. §. 1. h. 2. C. de libert. & lib. eorum*
E *adde Weſenb. h. tit. 17.* datur contra tabb. eorum patronis *bonorum poſſeſſio.* (6) *§. 3. I. de ſucc. libert.*

## *Notæ variorum.*

Jus patronatus Eccleſiaſticū duobus modis conſtituitur.

(1) [*De jure Patronatus*] Jus Patronatus Eccleſiaſticum duobus præcipuè modis conſtitui ſolet, *fundando* ſc. ſive ædificando & *dotando* Eccleſiam, vid. *Brunnem. d. J. E. l. 2. c. 8. §. 5. ſeqq.* Alii hæc ſeparant, & fundare de illo aſſerunt, qui fundum ædificandæ Eccleſiæ præbet. Huc etiam pertinet præſcriptio & privilegium ſive inveſtitura. *Stryk.* Nimirum Jus *Patronatus Eccleſiaſticum* eſt jus eligendi & præſentandi ſubſtituendum Epiſcopo ad munus Eccleſiæ vacans patrono certis ex cauſis competens, *a. c. 3. 5. X. de jur. patron. Mencken.*

(2) [*Perſonæ vel bona*] Jus patronatus producit *debitam reverentiam* & *querelam adverſus libertum ingratum*, quæ eſt imploratio officii judicis, qua patronus liberto ingrato pro modo admiſſi pœnam irrogari petit, *l. 7. §. 1. ff. h.* Denique *bonorum poſſeſſionem contra tabulas libertorum* centenariis majorum, qua patroni à libertis ſine liberis decedentibus præteriti, tertiam bonorum partem conſequuntur, *§. 3. J. d. ſucceſſ. libert. amittitur, per remiſſionem* vel *expreſſam*, qua liberti à jure Patronatus liberantur, non tamen à jure & reverentia & jure quod adverſus ingratos libertos patrono competit, *l. 3. C. d. bon. libert.* vel *tacitam*, ut denegationem alimentorum *l. 5. §. 1. ff. h. Mencken.* Jus *Patronatus Romanorum* partim ex jure naturali, partim civili dependebat. Hodie tamen in genere beſſat, quia ſolbitura *Romana* apud nos hac in parte evaluit. Obſequium autem parentibus præſtandum eſſe juris naturalis, ipſe *Autor* fatetur, pœnæ verò immorigeris liberis imponendæ noſtratibus legibus deſinuntur, ut hæſitans *Romanus* nihil debeamus. *Titius.*

(3) [*Ingrati*] Quia ita ad delinquendum invitaretur libertus, ſi ob ingratitudinem non poſſet in ſervitutem revocari. *Stryk.*

(4) [*Alere*] Aut quia ægrotum elicit. *Stryk.*

(5) [*Orator*] Hæc actio dari poſſet hodie, ſi quis proprium hominem libertate donaſſet, & ille poſſet quod moliretur contra manumiſſorem. *Stryk.*

(6) [*Bonorum poſſeſſio*] Si fecit ipſum patronum præteriret. *Stryk.*

# *TITULUS XV.*

## De obſequiis parent. & patron. Præſtand.

*Junge L. 6. C. tit. 6.*

Obſequium [1] parentum eſt juris naturæ: Ad horum exemplum introductum eſt obſequium patronorum: Hinc abſque venia non vocantur in jus, *ut ſupr. ad tit. de in jus voc. dict.* habent beneficium competentiæ, *7. §. 1. h.* non conveniuntur actione famoſa, aut alia quæ fraudis aut *doli mentionem* [2] habet, *5. §. 1.* nec eorum procuratores; *2. pr.* eorum perſona ſancta ſit: *9.* contra delinquentes a DEO puniuntur, & à Judice *pro arbitrio.* [3] *1. §. 2. vid. Carpz.* [4] *2. q. 100.*

## *Notæ variorum.*

Obſequium complecti tur & reverentiam, & beneficium competentiæ.

Contra parentes actio doli intentanda non eſt.

[*Ad rubr.*] Agitur *in hoc t.* de obſequiis libertorum, non *ſuorum*, ſed *emancipatorum. Stryk.*

(1) [*Obſequium*] *Conſiſtit ad reverentia teſtatione l. 9. ff. h.* cui congruit denegari famoſas actiones & exceptiones contra parentes & patronos *a. l. 5. §. 1. l. 7. §. 2. ff. h.* eodemque juramentum deferentes à jurejurando calumniæ eſſe immunes *l. 7. §. 3. ff. h.* (2) in *beneficio competentiæ* illis indulgendo *l. 7. §. 1. ff. h.* Non *complectitur operas ſerviles aut ancillares libertorum, quando patre* alimentorum vice bonis *adventitiis* eorum *fruatur*, unde tum mercedem petere haud prohibentur *a. l. 10. ff. h. Carpz. 3. 10. 8. Mencke.*

(2) [*Doli mentionem*] Id e. licet dolo quid factum à patre, non tamen actio doli, ſed in factum inſtruenda, & verba temperanda, ne doli vel fraudis mentio fiat. *Stryk.* Sed cum hiſ pugnare videtur famoſiſſ. auſtoritas in *l. 34. §. 4. d. Jurej.* ibi *Hoc jusjurandum de calumnia neque patrono neque parentibus remittitur.* At quomodo hæc concordant cum *l. 8. §. 5. ff. quæ ſatisd. cog. l. 7. §. 3. ff. h. e. l. 16. ff. d. jurej. l. 13. §. 14. ff. d. damn. infect.* Ex quibus textibus illud certiſſimè concludunt, *parentibus patroniſq; calu-*

[illegible]

[illegible]

[illegible]

[illegible]

# LIBER XXXVIII.

## TITULUS I. II. III. IV. & V.

## De oper. libert. De bonis. (1) De libertis univerſitat. (2) De aſſign. lib. (3) Si quid in fraud. (4) patr. fact. ſit.

*Junge L. 6. C. tit. 4. & 5.*

Operæ ſunt diurnum officium, quia per diem ſunt. l. 1. *Officiales*, (1) in officio perſonæ conſiſtunt, & ad perſonam patroni referuntur, ut ad ſic. commod. &c. [illegible] *Fabriles* (2) ſive artificiales ſunt, quæ ex artificio

ſolo præſtantur exempl. gr. pingere &c. [illegible] de condict. indeb. Non debentur, niſi promiſſæ, vel jurejurando, vel ſtipulatione [illegible] de liberal. cauſ. Debentur à liberto, non etiam a liberis parentibus, [illegible] de obſeq. parent. licet ſtipulatæ ſint in emancipatione [illegible] (hoc tamen tantum de operis fabrilibus [illegible] intellige. vid. [illegible])

Hæc tamen ſæpe extenduntur ad operas ruſticorum hominum propriorum, [illegible] &c. vid. [illegible]

De bonis liberti vid. [illegible] De libert. univerſ. [illegible] De aſſign. libert. (quando ſc. patronus alicui ex filiis unum vel plures libertos aſſignat, [illegible] ut ſolus quoad ſucceſſionem jus patronatus habeat) vi. [illegible] De alien. in fraud. patron. vid. [illegible] &c.

## Notæ variorum.

[illegible]

[illegible]

# TITVLVS VI.

## Si tabb. teſtam. nullæ extabunt, unde lib.

[illegible]

### *Notæ variorum.*

(1) [*Non extante*] Proviſio prætoria quæ quoad liberos, agnatos & cognatos occurrit, hodie non tantum non eſt neceſſaria, ſed & ex parte etiam falſa, cum agnati cognatis non amplius præferantur, ſed, inſuper habito agnationis & cognationis diſcrimine, ex gradus paritate vel proximitate unicè ſucceſſio æſtimetur. *Titius* –

*Pro liberis ſunt liberorum, & nepos, & pronepos vivis adhuc.*

(2) [*Liberis*] Pro his enim & natura & parentum votum militat. *c. l. 7. Stryk.*

(3) [*Neceſſaria non; eſt*] Excipiunt caſum *l. f. C. h. t.* quando ſc. avus decedit relicto filio ſuo & ex eo nepote, filius verò itidem moriatur, antequam ſe immiſcuerit hereditati paternæ, & nepos hoc caſu velit repudiare hereditatem paternam, & avo tantum ſuccedere quod facere non poteſt, niſi beneficio Prætoris. Ratio, quia utraque hereditas ſemel confuſa eſt. Hinc jure civili iterum diſtingui nequit. Prætor itaque facultatem dat, unam præ altera eligendi. Sed quid in caſu Si pater & mater decedunt, ex quibus illa dives, hic obæratus relicto filio impubere, qui poſt paucas ſeptimanas pariter deceſſit; an agnati repudiare poſſint hereditatem patris & maternam acceptare? Aff. etiam *Jure Civili*, quia beneficium abſtinendi intra annum deliberationis tranſmittitur, & ita pronunciatum *d. 23. Oct. 1699. vid. Tr. d. d. d. J. d. 9. c. 6. §. 7. Stryk.* Filio ſuo herede exiſtente non locum habet *Succeſſorium Edictum*, nepos enim ut ſuus vocari nequit, qui tempore mortis proximus in poteſtate teſtatoris non fuit, quem que præceſſit pater, ipſo jure factus avi heres, *l. 1. §. 8. ff. d. ſuis & legit. her.* unde nepos, qui ſe patris poſt avum inteſtatum defuncti negat heredem, avi paternas facultates non ſuſcipit ex jure civili, quia non eſt ſuus, ſed ex *Edicto unde liberi* à Prætore admittitur, *l. f. C. und. lib.* quod non eſſe mutatum docet *Brunn. Ex. 8. quæſt. 2. num. 11. ſeq. Mencken.*

(4) [*Et ſui*] Quantum ſc. ad jus *ſuccedendi*, æque enim ad ſucceſſionem jure civili noviſſimo pervenire poſſunt emancipati, quam ſui; Secus tamen eſt quo ad modum *acquirendi. Stryk.*

# *TITULUS VII.*

## Unde legitimi.

*Junge L. 6. C. tit. 15.*

a. *Secundò *legitimis:* (1) quæ eſt bon. poſſ. à prætore, deficientibus liberis, agnatis ab inteſtato delata. Eſt *confirmandi* (2) Jur. civ. gratia. D

### *Notæ variorum.*

(1) [*Legitimis*] Sive *Agnatis. Stryk.*

(2) [*Confirmandi*] Agnati enim de jure civili jam tum ſuccedebant. *Stryk.* Quoniam *LL. XII. Tabb.* ſuis deficientibus admiſere agnatos *pr. J. d. leg. agnat. ſucc.* atque hæc *bonor. ſucceſſ.* agnatis haud eſt neceſſaria, cum *Novel. 118. c. 3.* ipſis liberaliſſimè data ſucceſſione ſubvenerit. *Mencken.*

# *TITULUS IIX.*

## Unde cognati.

*Junge L. 6. C. tit. 15.*

D *Tertiò cognatis, quæ eſt bon. poſſ. à prætore, deficientibus liberis & agnatis, ab inteſtato cognatis delata: a. Ex neceſſitate dabatur, nam Jure civ. neque hi vocabantur. Hodiè *nullum uſum habet,* (1) *Nov.* 118.

### *Notæ variorum.*

(1) [*Nullum uſum*] Poſtquam agnati & cognati vocantur. Scilicet in allodio, non in feudo, per *Novell. 118. cap. 3.* æqualiter ad ſucceſſionem. *Stryk.*

TIT.

# TITVLVS IX.

## De ſucceſſorio edicto.

*Junge l. 6. C. tit. 16.*

D 1 Hoc *ſucceſſorium* (1) Edictum eſt jus prætorium, quo remotô proximo, ſequentes in ordine ad ſucceſſionem ab inteſtato admittuntur. Quod fit * vel de capite in caput, ſive de ordine in ordinem, ſive de claſſe in claſſem, ſi ſc. à liberis ad agnatos defertur, &c. Et filius tanquam filius excluſus admittitur tanquam agnatus. &c. l. 1. §. 11. *h. t. prinс. unde legit. de quo agitur in tit. ſeqq.* 15. * de gradu in gradum, quod eſt Jus prætorium, quo deficiente proximo, Jus ſuccedendi in eodem ordine defertur in ſequentes gradus proximiores e. g. deficiente filio, defertur *nepoti ex filio.* (2) &c. Olim deferebatur hereditas illi, qui tempore mortis erat proximus, quo deficiente hereditas *fiſco* (3) cedebat; poſteà prætor ſequentem proximum agnatum vocavit. § 7. *I. de legit. agn. ſucc.* Hoc Jus non poteſt locum habere in ſuis: nam ſi ſuus *adeſt*, (4) reliqui omnes ſunt extranei. *L. 1. §. 8. de ſuis & legitimis.* Neque hoc novo jure *correctum* (5) *Fr. Ex. 8. q. 1. Diſſ. Gloſ.* 2.

### Notæ variorum.

(1) [*Hoc ſucceſſorium*] Duo ego Præter. (2) [illegible] [illegible] [illegible] *ſi* ... *l. 1. §. 13.* [illegible] *l. 7. unde liberi*, [illegible] *l. 12. de ſuis & legit. l. 10. §. 3. de grad.* [illegible] [illegible] *Schweſſer Diſſ. de ſucceſſ.* [illegible] [illegible] *Brunn.* [illegible] [illegible] *Tirus.*

(2) [*Nepoti ex filio*] [illegible] *Unde de*[illegible]

Filio hæreditatem repudiante, hoc nepos [illegible] poteſt.

[illegible] [illegible] *l. 1. §. 11.* [illegible] [illegible] *Brunn.* [illegible]

(3) [*Fiſco*] Tanquam vacans. *Brunn.*

(4) [*adeſt*] [illegible] *Brunn.*

(5) [*Correctum*] [illegible] [illegible] *Brunn.* [illegible] [illegible] *Tirus.*

TIT.

# TITULUS X.

## De gradibus & affinibus, & nomin. eorum.

Bonorum poſſeſſio defertur diverſis ordinibus, & ex iis proximioribus. De gradibus verò actum eſt ad tit. de Sponſalib.

### *Notæ variorum*

[*Ad Rubricam*] Indagari proximitatem graduum jubet, *l. 1. & ſeqq. ff. de gradibus* de qua actum *Libro 23. ff. tit. 1. pag. 337. & praeced. Menckjen.*

# TITVLVS XI. XII. XIII. XIV.

## Unde vir & uxor.

*Hæc eſt bon. poſſ.* (1) quæ deficientibus deſcendentibus, aſcendentibus, & collateralibus, defertur conjugibus: *L. un. h.* modo conjugium ſit *legitimum*, (2) *L. un. h.* & duret tempore *mortis* (3) *L. un. h.* Sic excluditur fiſcus. *L. un. C. h.* hæc bon. poſſ. etiam hodiè adhuc neceſſaria eſt, nam *ad totam* (4) hereditatem aliunde quàm ex hac non admittuntur.

Reliqui tituli hujus Libri hodie nihil proſunt.

### *Notæ variorum.*

(1) [*Hæc eſt bon. poſſ.*] Eoam hodie ſalutaris adhuc eſt, cum univerſalem ſucceſſionem tribuat. *Carpz. p. 3. c. 18. d. 31.* eamque intra 100. *dies* petendam eſſe monuit. *Dn. Stryk. d. ſucc. ab int. diſſert. 4. c. 1. §. 4. Menckjen.*

(2) [*Legitimum*] Sufficit illam legitimitatem adeſſe, quam jus *Civile* requirit. Ergo benedictio ſacerdotalis præviſe neceſſaria non eſt, ſed etiam deſponſati de præſenti, hoc beneficio uti potuerunt. Aliud eſt in ſucceſſione conjugum, ubi matrimonium ſecundum ſtatuta contractum eſſe debet. *Stryk.*

Conjux deſertor non hæredit.

(3) [*Mortis*] Ergo conjux deſertor non gaudet hoc beneficio ſucceſſionis. *Stryk.*

(4) [*Ad totam*] Quamvis enim conjugibus per ſtatuta locorum ſit proſpectum, ſtatuta tamen illa regulariter tantum *certam* bonorum quantitatem aſſignant ſuperſtiti, ut ita plenius ipſis conſulatur per ſucceſſionem *prætoriam*, e. gr. Mortua uxore ſine cognatis & ſine teſtamento, maritus in *Statut.* nihil caperet, quam ſola mobilia. Quod ſi verò, *non ex Statuto*, ſed ex *Edicto hoc Prætorio* ſucceſſionem peteret, omnia bona, etiam immobilia conſequi poſſet. Singulare eſt in quibuſdam locis *Ducatus Brunſvicenſis* & *Epiſcopatus Hildesienſis*, quod non exiſtentibus liberis, licet agnati ſint, ſuperſtes omnia bona capiat, juxta vulgatum Rud: Längſt Leib / Längſt Gut. *Stryk.* Sed forte in ſeculo vix exſtet caſus, ut illa locum inveniat, cum rarò ſine omnibus cognatis & teſtamento ac relicto conjuge, quis moriatur, ut ad hunc omnis ſucceſſio devolvenda ſit. *Titius.*

#### *Ad TIT. XII.*

De Veterũ norma & militũ ſucceſſione.

Nimirum *Fiſcum excludit bon. poſſeſſio quæ ab* inteſtato *agnatis cognatisve veterani aut militis* ex militari delicto damnato defertur ad quintum uſque gradum, *l. 1. l. 2. ff. h. t. quæ hodie arg. Nov.* 118. *c. 3. opus non eſt p. 3. C. El. 6. Menckjen.*

#### *Ad TIT. XIII.*

Quibus non competit bonorum poſſeſſio.

*Fiſcus ad ſucceſſionem admittitur, ſi cui tanquam indigno denegetur bonorum poſſeſſio*, veluti cum dolo petentis factum, ne mutaretur teſtamentum *l. un. ff. h. t. l. 1. ff. ſi quis aliq. teſt. prohib. vel coeg. tit. de his quæ ut indign. Menckjen.*

#### *Ad TIT. XIV.*

Ut ex LL. SCtis bonorum poſſeſſio detur.

Eſt *quædam extraordinaria bon. poſſeſſio*, quæ in ſubſidium novis legibus, *& iis* vel *Conſtitutionibus Principum*, ſive ex teſtamento, ſive ab inteſtato conceditur *l. 1. ff. h. t. §. 3. J. d. bon. poſſ. Conſ. t. d. bon. poſſ. Menckjen.*

# TITULUS XV.

## Quis ordo in poſſeſſionibus ſervetur.

Succeſſio ab inteſtato ſimpliciter dicitur legitima: *[illegible] de A. v. O. H.* [illegible] *de V. S.* Et eſt, quæ deficiente teſtamentaria, à Lege immediate defertur, *[illegible] de A. v. O. H.* ſc. quia teſtamentum aut nullum, aut non valide[illegible] * adeſt *[illegible] de hered. quæ ab inteſt. L. 1. de ſuis & legit. [illegible] ad [illegible] de hered. quæ ab inteſt. [illegible] 10. [illegible]* Ex Nov. 118. defertur Succeſſio * vel Jure *SANGUINIS* ſive cognationis, hæc ſic dicta, in li- D

A nea * *RECTA* * *DESCENDENTIBUS* (*qui omnes excludunt* [illegible] *de*
B *bon. damnat.* [illegible] *de inoff. teſt.* [illegible] *Nov. XVII* [illegible] *ad Gal. IV.* [illegible]
C *[illegible] de teſtam. N. 118. c. 1. L. 1. §. 1. unde lib. 1. Feud.* [illegible]) * *LEGITIMIS* ſi-
D que vel * legitimis & *NATURALIB.* ſimul, qui tales ſunt * ab initio, quos natura
E procreavit, & lex ab initio approbavit etiam primo menſe *poſt nuptias* [illegible] C.
F *de nat. lib.* [illegible] *de ſtat. hom.* [illegible] *de his, qui ſunt ſui vel alien. jur.* C. (*non etiam,* [illegible] qui poſt ſponſalia ante benedictionem ſacerdotis nati [illegible] *Dɑſſ. Carpz.* [illegible]) Et hi excludunt omnes, etiam patrem, in cujus poteſtate defunctus fuit, *N. 118. c. 1.* [illegible] quoad bona defuncti propria. [illegible] *C. de bon. Patern.* [illegible] *C. de bon. quæ lib.* [illegible] (1) cujuscunque ſint conditionis, [illegible] *C. de Epiſc. & Cler.* licet ſuccedat *patri Lutherano.* [illegible] *C. de hæret. N.* [illegible] *C. de hæret. Nov.* [illegible] modò non ſint *Capucini.* [illegible] &c. [illegible] *de hæred.* [illegible] (2) Cujuscunque ſint ſexus *Nov. 118.* [illegible] *Feud.* [illegible] (3) ſive ſui heredes ſint, ſive non, nam hi *poſt Nov. 118. c. 1.* æquati ſunt, quoad jus ſuccedendi, non etiam quoad modum, nam *SUI ipſo jure* [illegible] acquirunt hereditatem, & tranſmittunt non acquiſitam ulterius: Emancipati ſuccedunt quidem cum Suis, ſed adire debent, *arg.* [illegible] *C. de teſtam.* [illegible] *C. de [illegible]* (4) *ſive nati* [illegible] ſint, ſive naſcituri. [illegible] *de A. v. O. H.* (5) ſive ſint primi, ſive ulterioris gradus: *N. 118. c. 1.* propiores tamen excludunt remotiores [illegible] poſteriores tamen cum propioribus [illegible] ſuccedunt, ſc. jure repræſentationis, *& in ſtirpes* [illegible] *N. 118. c. 1.* Si filius deceſſit, antequam agnovit paternam hereditatem, nepotes * J. civ. repudiatâ patris hereditate [illegible] adire avi hereditatem:

* *Jure [illegible]* [illegible] *C. unde lib.* [illegible]

* Ex poſt facto ſunt *LE-* E
*GITIMATI,* quos natura procreavit, & Lex ex poſtfacto approbavit: diſtingue G
tamen (*[illegible]*) [illegible] an legitimati * per ſubſequens matrimonium, & hi tales ſunt naturales & legitimi ab initio, *N. 12. c. 4.* [illegible] *N. 89. c. 8.* etiam *in feudis* [illegible] *Carpz.* [illegible] *de Feud.* [illegible] *de feud.* [illegible]

* Reſcriptum Principis: tum enim H
ſi liberi legitimè nati ante legitimationem * extant legitimati non ſuccedunt, *Nov. 89. c. 4.* niſi Princeps hoc quoque ſpecialiter *expreſſerit* [illegible] *Cod.* [illegible] *O. 142.*

* non extant, legitimati ſuccedunt, ſive K
poſtea liberi nati ſint ſive non: ſc. in allodialibus, *N. 89. c. 9.* non autem *in feudis.* [illegible] [illegible] *Carpz.* [illegible]

Legitimis tantum, quos lex tantum approbavit, ut ſunt *adoptivi* [illegible] Hi patri adoptivo ab inteſtato *ſuccedunt*, [illegible] ſive hoc, *arrogati*, [illegible] ſive in ſpecie *adoptati*, [illegible] idque ſive ab aſcendente, ſive extraneo [illegible] *de adopt.*

* *NON LEGITIMI* * naturales tantum, ſive ex concubina nati, * matri ac *maternis* [illegible] *ſuccedunt* [illegible] tanquam legitimi. [illegible] *unde cognati.* * quoad patrem verò diſtingue Si mortuus reliquit * *liberos* [illegible] aut conjugem legitimam, tum non ſuccedunt, ſed iis tantum alimenta debentur, *boni viri arbitratu*, [illegible] *Auth. licet, C. de nat. lib. N.* [illegible] * nullos liberos, aut conjugem legitimam, tum ſuccedunt patri naturali in *duas* [illegible] *uncias*, [illegible] inter naturales & matrem eorum dividendas. *Auth. licet. C. de nat. lib.* Libero naturalibus hodie comparantur procreati ex duobus *ſolutis*, [illegible] inter quos matrimonium non eſt prohibitum, [illegible] Wenn von zweyen Perſonen.

* ſpurii, [illegible] *unde cognati matri* [illegible] & maternis ſuccedunt * Injuſti, ſive ex *damnato coitu nati*, [illegible] ab omni aſcendentium ſucceſſione removentur, quibus ex bonis aſcendentium J. civ. nec alimenta debentur, [illegible] quod tamen *compenſatur* [illegible] Jure Can. [illegible] ex eo tamen non ſuccedunt, nec ejusmodi damnati fratres, [illegible]

Privantur deſcendentes hereditate, ſi (1) parentes ſint rei criminis perduellionis; [illegible] *C. ad L. Jul. maj.* filiæ tamen hic *ad legitimam admittuntur.* [illegible] (2) Si parentes vel liberi ſint *hæretici* [illegible] *C. de hæret.* (3) Si liberi propter delictum à Camera proſcripti aut *banniti ſint* [illegible] *C. de hæred. inſt.* (4) Si liberi *juratò renunciaverint* [illegible] parentum ſucceſſioni. [illegible] * *ASCENDENTIBUS*, [illegible] (ſc. ſi deficiant deſcendentes) hi præferuntur omnibus collateralibus, exceptis fratribus germanis, [illegible] eorumque liberis: [illegible] Hi verò, ſi * ſoli extant, * propinquiores excludunt gradu remotiores: [illegible] proximi *ſimul admittuntur*, [illegible] veteri jure pater excludebat matrem, [illegible] *ad SCt. Tertull.* [illegible] * remotiores, * omnes unius lineæ, æqualiter ſuccedunt. [illegible] * diverſæ lineæ, tum hereditas dividitur in duas *partes æquales*, [illegible] quarum altera paternis, altera maternis datur, [illegible] Wurt. Landr. [illegible] Co bonn. [illegible]

* concurrunt cum * fratribus defuncti germanis, ſuccedunt *unà cum his* [illegible] in capita. [illegible] *verſ. Si vero.* * germanorum præ defunctorum liberis *per Nov.* [illegible] quæ correcta eſt, [illegible] qui * exiſtentibus aliquibus fratribus in ſtirpes admittuntur: [illegible]

* non extantibus defuncti germanis, ſoli, cum aſcendentibus *non admittuntur*, [illegible] [ [illegible] ]

Parentes * legitimi *ita ſuccedunt* [illegible] * legitimis & naturalibus ſimul filiis, [illegible] idem eſt in legitimatis per ſubſequens matrimonium: [illegible] * *Legitimatis autem* [illegible] per reſcriptum Principis ſuccedit non *tantum pater*, [illegible] ſed etiam reliqui aſcendentes, [illegible] * Legitimis tantum *Arrogator* [illegible] ſuccedit *poſtea* [illegible] *C. de adopt.* Adoptans non extraneus ſuccedit, [illegible] *C. de adopt.* [illegible] *de ſucceſſ.* [illegible] extraneus autem *non ſuccedit*, [illegible] *de adopt.* [illegible]

* legitimi * Naturales tantum adminiſtrantes, ſuccedunt deſcendentibus eodem modo,[ii] ac hi illis, *N. 89. c. 13.*

* Spuriis, ut qui patrem non habent, *1. unde cogn.* §. *f. l. ad SCt. Tertull.* ſuccedit mater.[kk]

* Ex damnato coitu nati parentes planè non ſuccedunt, *N. 89. c. f. Ca. 3. c. 14. d. 11.* * *COLLATERALIBUS*, naturalibus & legitimis, etiam per ſubſequens matrimonium, & Principis reſcriptum, *Nov. 89. c. 2.* §. *D. Lauterb. d. l.* [illegible] Ut ſunt * fratres & ſorores * ſoli * germani, reliquos omnes excludunt, *N. 118. c. 3. verſ. unde conſeq. Aut. post fratres autem C. de legit. hered.* ſuccedunt in capita: * unilaterales ſuccedunt deficientibus germanis & eorum liberis in capita, & ſimul admittuntur *liberi eorum in ſtirpes*,[ll] * qui concurrunt cum prædictorum fratrum liberis, & unà *in ſtirpes ſuccedunt*,[mm] *d. c. 3.*

* ulteriores: fratrum *germanorum filii*[nn] excludunt fratres unilaterales, *N. 118. c. 3. Carpz. 3. c. 18. d. 1.* Soli *ſuccedunt in capita*[oo] *d. c. 3. R. I. de anno 1530.* §. [illegible] §. idem ſuo modo eſt in *unilateralibus*.[pp] Ex reliquis cognatis *propiores*[qq] excludunt remotiores; abſque repræſentatione aut conſideratione duplicatis vinculi: *N. 118. c. 3.* §. *f.* & quidem ſuccedunt *in infinitum*.[rr] *N. 118. c. 3.* (*Diff. Ca.*[ss] *3. c. 14. d. f.*) Qui ſe dicit cognatum, hoc probet, *v. Ca. 3. c. 18. d. 29. v. l. 24. de prob.* * vel ex *RATIONE CIVILI*[tt] deficientibus omnibus * cognatis defertur bon. poſſ. conjugibus; *de quo vid. tit. unde vir & ux.* (& ex benigna interpretatione *ſponſis*,[uu] *Brunnem. dec. 1. q. 1. propter* [illegible] *de jur. fiſc. Berl. 3. concl. 23. n. 35. Carpz. 3. c. 10. d. 21.*) Ut autem hæc ſucceſſio procedat, requiritur (1.) ut juſtum ſit matrimonium (2.) ut duret *tempore mortis*[ww] *L. un. C. unde vir & ux.* Excluduntur ab hac ſucceſſione (1.) ſi alter alterum occiderit, [illegible] §. *1. ſol. matr.* ſicut in adulterio *deprehenſum*,[xx] *24.* §. *f. de adult.* (*obſ. 3.* §. *3. ad SCt. Silan.*) aut culpa tantum occiderunt, e. g. ſi maritus uxori neget neceſſaria *alimenta*[yy] [illegible] *de agn. & al. lib.* tum enim fiſco vindicantur: [illegible] *de his, quæ ut indign.* (2.) ſi uxor intra annum luctus ad ſecunda vota tranſeat, *1. 2. C. de ſecund. nupt.* *Hodie*[zz] etiam cum liberis conjuges ex certa parte admittuntur. *N. 53. c. 6. N. 117. c. 5.* ſi ſc. matrimonium ſit *indotatum*,[a] deficienteque *dote*,[b] & ſuperſtes *inops*[c] *propter d. N. 53. c. 6. in f. & a. F. 53. Aut. præterea C. unde vir. & ux.* ſc. in quarta hereditatis, ſi liberi fuerint tres aut pauciores, ſi verò plures fuerint, ad portionem virilem: *N. 117. c. 5. d. Aut.* Et quidem * pleno jure, ſi concurrunt cum adſcendentibus & collateralibus:

* quoad uſumfr. ſi concurrunt cum liberis *ejusdem matrimonii*,[dd] *dd. LL.*

* Cognatis & Conjugibus, defertur certo caſu certis collegiis, e. g. hereditas (1.) decurionis curiæ *4. C. de hered. decur.* (2.) militis, legioni: *2. C. d. t.* (3.) *navicularii*,[ee] collegio navicularionum: *1. C. d. t.* (4.) *Fabricenſis*,[ff] collegio fabricenſium: *f. C. d. t.* (5.) cohortalis, reliquis cohortalibus: *3. C. d. t.* quidem hæc extendunt ad *omnia collegia*[gg] bona, ſed contra *neutrum privilegiorum*.[hh] Tandem ſi ſunt bona vacantia *occupat*,[ii] *vid. infra de jure fiſci.* Affines *non ſuccedunt*,[kk] *7. C. communia de ſucc. &* [illegible] *de jur. fiſc.*

Hodie uxor omnia *jure provinciali*[ll] ſunt obſervanda, non loci mortis, ſed ejus, ubi quis habuit *domicilium*,[mm] vel bona: *Ca. 3. c. 12. d. 14.* [illegible] *& lib. 2. Reſp. 52. vid.* [illegible] *de hered.* [illegible] *de leg.* [illegible] *domicilio*[nn] [illegible] *Ca. 3. c. 10. d. 19. lib. 2. Reſp. 18.*

(Diff.

( [illegible] ) [illegible] idem eſt, ſi tunc ad certum locum perpetuo [illegible] [illegible] Res incorporales pertinent ad [illegible] In vagabundo ( [illegible] ) recurritur ad domicilium [illegible] Carpz. [illegible]

## Notæ variorum.

(1) [ [illegible] ] [illegible]

(2) [ [illegible] ] [illegible]

(3) [ [illegible] ] [illegible]

(4) [ [illegible] ] [illegible]

(5) [ [illegible] ] [illegible]

(6) [ [illegible] ] [illegible]

(7) [ [illegible] ] [illegible]

(8) [ [illegible] ] [illegible]

(9) [ [illegible] ] Quæreres [illegible]

(10) [ [illegible] ] [illegible]

(11) [ [illegible] ] [illegible]

(12) [ [illegible] ] [illegible]

(13) [ [illegible] ] [illegible]

(14) [ [illegible] ] [illegible]

(15) [ [illegible] ] [illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

(21) [illegible]

(22) [illegible]

(23) [illegible]

(24) [illegible]

(25) [illegible]

(26) [illegible]

(27) [illegible]

(28) [illegible]

(29) [illegible]

(30) [illegible]

(31) [illegible]

(32) [illegible]

(33) [illegible]

[illegible] Drak.

(34) [illegible]

(35) [illegible]

(36) [illegible]

(37) [illegible]

(38) [illegible]

(39) [illegible]

(40) [illegible]

(41) [illegible]

(42) [illegible]

(43) [illegible]

(44) [illegible]

(45) [illegible]

(46) [illegible]

[illegible]

(47) [illegible]

(48) [illegible]

(49) [illegible]

(50) [illegible]

(51) [illegible]

Quod [illegible]

(52) [illegible]

(53) [illegible]

(54) [illegible]

(55) [illegible]

(56) [illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

Quæ ſecundum ſtatuta loci, ubi ſita.

nequeunt ad alium Jurisdictionem, vel. Gail 2 O. 124. n. 17. Mobilia verò perſonam defuncti ſequuntur, & ſic in his ſucceditur ſecundum ſtatuta loci domicilii. Mev. ad J. Lubec. p. 2. t. 2. art. 10. n. 22. Struv.

(24) [Ad domicilium] Hoc intelligendum de ejusmodi rebus, quæ perſonæ quæſita, v. g. ausſtehende Schulden; vel quæ alias ex contractu debentur defuncto, non quæ prædio vel fundo, hæc enim jure immobilium æſtimantur. Struv.

Bonorum vagabundi, qui ſemper domicilium non conſtituit.

(25) [Nativitatis] Forum enim originis tamdiu ſalvum manet, quamdiu quis aliud certum domicilium nondum conſtituit. Sed cum hodie, ſi hereditas de loco ad locum transponeretur, detrahi ſoleat gabella hereditaria, Quæritur, ubi hæc debeatur ex bonis vagabundi? Rſ. Illi Magiſtratui, ubi bona deprehenduntur. Struv.

## TIT. XVI.

De Suis & Legitimis heredibus.

[Ad Rubric.] Succeſſio ab inteſtato eſt jus acquirendi hereditatem, l. 4. h. l. 3. 4. C. de ſuis & legit. hered. in defectum diſpoſitionis heredatariæ. l. 9. §. 2. de liber. & poſth. her. inſt. legitimis heredibus promiſſa. l. 29. §. ult. de ſtat. lib. in bonis ab inteſtato defuncti patrisfamilias competens. Ab inteſtato autem venire dicuntur heredes, qui citra aliquam defuncti ordinationem ad ſucceſſionem vocantur, ſive is omninò teſtamentum non fecerit, aut non jure fecerit, aut quod fecerat, ruptum irritumque factum ſit, aut nemo ex eo heres extiterit, l. 1. pr. h. Tali ab inteſtato decedenti ſuccedunt (1) deſcendentes, (2) his deficientibus, aſcendentibus, (3) his deficientibus, collateralibus locus eſt. Mev. tit. c. 3.

## TIT. XVII.

Ad SCtum Tertullianum & Orphitianum.

[Ad Rubric.] Ex priori tit. conſtat, ut ſucceſſionem legitimam ſic, vel ex lege XII Tabb. & defertur (1) ſuis, (2) legitimis ſive agnatis proximis, l. 1. §. §. 1. 2. 4. l. 2. ff h. E poſterioris vero, ut SCto Tertulliano, matres ingenuæ trium, Libertinæ quatuor liberorum jus habentes ad ſucceſſionem filiarum filiorumve inteſtato mortuorum admiſſæ ſunt, §. 2. I. de SCto Tertull. Orphitiano verò, quo liberi ad ſucceſſionem matrum inteſtatarum admiſſi ſunt, pr. I. ad SCto Orfit. Mevius.

# LIBER XXXIX.

# TITULUS I.

## De operis novi nunciatione.

*Junge L. 8 C. tit 11. l. 5. t. 31. x. de oper. nov. nunciat.*

D

Novi operis nunciatio eſt prohibitio, novum opus paranti, [1] in alterius præjudicium, [2] ad id facta, ne in eo pergat, donec de ejus jure conſtet Verbot eines neuen Werckes. Gail. 1. O. 16. num. 1. Publica [3] fit publice à prætore ipſo, vel per literas aut mandatum: 5. §. 10. L. 16. Privata fit a privato, [4] privata auctoritate. Realiter fit manu [5] ſive lapilli jactu: 5. §. 10. h. 20. § 1. quod vi aut clam. Ca. 1. Reſp. 6. n. 6. vel verbaliter. [6] 20. §. 1. quod vi aut clam. Ad privatam hodie adhibentur Notarii cum teſtibus: [7] Mindan. 2. de mandat. c. 30. n. 12. 13. Utimur [8] verbali contra novantem in ſuo, reali & publica, in noſtro vel alieno, 5. §. 5. n. 1. §. 6. h. Mindan. d. l. n. 17. (Diſſ. 5.) †

C Hanc nunciationem introduxit Prætor 1. pr. Publicam facit prætor, vel coram, vel per nuncium: etiam ex officio: [9] Privatam faciunt illi, ad quos res pertinet: 2. e. g. in locis. * Publicis omnes cives, [10] 3. §. f. propter 4. h. & ſecundariò incolæ, [11] arg. 29. ad municip. 1. 4. 5. 6. C. de. incol. 4. h. non etiam peregrini aut banniti, [12] pupilli, 5. pr. fœminæ, [13] arg. 6. de pop. act. 2. de R. J. Bach.

* Privatis, illi, qui habent jus in re, 1. §. 19. (ut (1.) Dominus, L. un. §. 3. de remiſſ. etiam minus plenus, & utilis tantum, 3. §. 3. a. F. 8. arg. 16. de ſervit. fictus tantum, ut b. f. poſſeſſor, 1. §. 19. 13. d. R. J. partialiter 5. §. 6. v. 3. §. 1. 2. h. Bach. V. & D. 41. th. 2. B. (2.) Creditor hypothecarius: 9. (3.) qui habet ſervitutem [14] in eo fundo

fundo, *un. §. 3. de remiſ. 6. ſi ſerv. vind. Obſ. 14. h.* [9] etiam *perſonaliter*. [10] *L. un. §. 4. de remiſ.* Hæc ſi proprio tantum nomine nunciat, utiliter, ſi nomine proprietarii & procuratorio, directo nunci. *L. 9. 1. §. f. & l. 2. h. Bach. V. 2. D. 15. th. 2. C.*) etiam per alios, e. g. tutor ſolus *l. 7. §. 1.* per *Procuratorem*: [11] *5. §. 18. 19. pr. vid. omnino dd. LL. junct. 1. C. de procurat.* quique non prohibeatur: ut pupillus ſine tutore, *15. §. f. de injur. 5. pr.* NON etiam, qui habent tantum *jus ad rem*, [12] *5. §. 3.* niſi fiat abſente *Domino*: [13] *1. C. ſi per vim.* Alioquin eſt ipſo jure nulla, *2. Cz. 1. Reſp. 7. n. 2.*

P Nunciatur novum opus in alterius præjudicium parantibus, & qui eorum nomine ipſi *præſentes ſunt* [14] *5. §. 1. L. 10. 11. h.* fabris: *5. §. 3.* Hæc etiam inſcium dominum illicò obligat. *dd. LL.* qui tamen regreſſum habet contra fabros, & ex æquitate audiendus eſt, *ſi confeſtim* [15] probare velit, ſibi jus eſſe ibidem ædificandi. Sufficit uni *ex pluribus* [16] nunciatum eſſe, *5. §. 6. h.* aut vicinis dici. *5. pr.* Hodie etiam *magiſtratibus* [17] majoribus. *Unm. 18. & c. h. vid. 2. de in jus voc. 5. §. 7. h. Dn. Bardili de N. O. N. th. 22.*

Ratione objecti requiritur (1.) ut opus inchoatum, *5. §. 2. in f. 8. §. 1.* ſit *in re ſoli*, [18] vel ſolo coherente. *1. §. 12.* ædificando, aut deſtruendo, quod in priſtinum ſtatum reſtitui poſſit, *44. de R. V. 1. §. 12. h.* (2.) novum, *1. §. 1. Cz. 1. Reſp. 6. num. 10.* (3.) quo priſtina rei forma *mutatur*, [19] *1. §. 11. 13. arg. 76. de judic. arg. 5. §. 11. h.* ſive fiat in urbe, villis, aut *pagis*, [20] *1. §. 14.* privato, vel *publico*, [21] religioſo, ſacro, ſancto: *1. §. 17.* (*Diſſ. Weſenb. h. propter. 1. §. 1. h.*) non autem locum habet (1.) in operibus publicis ad communem utilitatem ſuſceptis, *1. §. 2. de Cloac. 5. §. 11. h.* (2.) quorum mora *damnoſa* [22] eſt, *5. §. 12.*

Fiat *in re præſenti*, [23] *5. §. 2. & 4. h.* (nec alibi facta ex poſt facto convaleſcit, *5. §. 4.*) quocunque tempore, etiam *feriato* [24] *1. 1. §. 4. h. arg. f. C. de feriis.* Cauſa neceſſario non eſt *exprimenda*. [25] *1. pr.* ff.

*Nunciatione* [26] legitimè facta deſinat ſtatim nunciatus & *hæres*, [27] *1. §. f. L. 22.* & particularis ſucceſſor, *f. h.* & curet nuncians annotari, quod ante ædificatum ſit: *1. §. 1. h.* Secus eſt, ſi fiat *illegitimè*. [28] *1. §. 11. 12. L. 2. 5. §. 2. 4. Cz. 1. Reſp. 7. n. 2.* *Si contra hanc* [29] nunciationem nunciatus &c. pergat ædificare (*licet jure faciat*, [30] *20. §. 1. 3.*) datur *edictum reſtitutorium* [31] ſive demolitorium, *20. §. 1.* nuncianti & heredibus, *22. §. 6.* contra nunciatum, & eos, qui ratihabuerunt, *20. §. 7.* & ſucceſſores nunciati, *1. §. f. 22. f. h.* ad id, ut deſtruatur, quod factum eſt poſt legitimam nunciationem: Deſtruat ipſe nunciatus propriis ſumtibus, heres autem tantum patitur deſtruere, niſi ejus dolus vel culpa acceſſerit: *22. h.* Idem eſt in ſucceſſore *ſingulari*. E. [32] *f. h.* De *uſu hodierno*, [33] *vid. Gail. 1. O. 16. n. 13. 16.* J.n.

A Extinguitur * Dominii mutatione (1.) *morte nunciantis*, [34] *8. §. 6.* re adhuc *integra*, [35] *20. §. 6.* non etiam *nunciati* [36] *9. §. f.* (2.) alienatione rei *nunciantis*, [37] *8. §. 6.* non etiam, ſi *nunciatus* [38] alienavit rem ſuam: *f. h.* D

L. * Remiſſione privata, quæ fit privato pacto illorum, quorum intereſt; *1. §. 10. h.* vel publica, quæ fit * immediatè à Lege (1.) ſi notorium ſit, frivolam eſſe nunciationem. (2.) Si nunciatus *ſatisdederit* [39] de ædificio deſtruendo, ſi appareat ſibi non fuiſſe jus ædificandi: *1. §. 3. L. 20. §. 9. h.* hoc *limitatum* [40] *in L. un. C. h.* quod quando admittendum, judex cognoſcit. *Gail 1. O. 16. n. 17. §. Carpz. 1. Reſp. 7.* * mediatè à prætore (1.) ſi nuncians in
B
h.



num-

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## Notæ variorum

[illegible]

[illegible] Alvar. [illegible]

(15) [Cod. l. 14.] [illegible] Vel [illegible]

(16) [Perſonatum] [illegible]

(17) [Praetermiſerint] Quod ſi [illegible]

(18) [illegible]

(19) [Dominus] [illegible]

(20) [Profitentur ſuam] [illegible]

(21) [illegible]

(22) [illegible]

(23) [Magiſtratibus] [illegible]

(24) [illegible]

(25) [illegible]

(26) [Pa-

[illegible]

[illegible]

[illegible]

(46) [*[illegible]*] [illegible]

(47) [*Præstare [illegible]*] [illegible] *Mev. Jur. Lub. p. 3. t. 12. d. l. 15. num. 35. [illegible]*

(48) [*Prætor significat*] [illegible]

(49) [*Justam esse*] [illegible]

# TITULUS II.

## De damno infecto, & de Suggrundis & protectionibus.

D Hic dantur remedia ad damnum avertendum, quod ex opere jam facto veremur futurum. a. Damnum, (*de quo vid. l. de pan. §. h. §. 13. l. ad Leg.*
D *Aquil. 151. de R. I.*) hic est diminutio patrimonii, quæ fit per deteriorationem & corruptionem. Suggrundia ſunt tabulæ, extra ædificium, à ſummo extenſæ, ut id contra imbres defendant. De protectionibus ſive *projectionibus*, (1) *l. 242. §. 1. de V. S.*

Prætor hic concedit * (1.) CAUTIONEM de damno infecto, qua deficientibus ordinariis remediis, alterum de damno infecto, ſi illud *antiquum*, (2) · reſtando A
D & reſiſtendo, ſecurum reddimus. Eſt ſubſidiaria. [illegible]
N

Cau-

Cauſa efficiens eſt Prætor; mandatum prætoris, *7. pr. 10. §. 1.* & magiſtratus
C *municipalis:* [1] *1. 4. §. 3.* (*Obſ. 26. §. 1. ad municip.*) Hodie omnium, qui civilem habent juriſdictionem: *ad petitionem*, [4] *4. §. 8.* factam extraordinaria perſecutione, *Bach. V. 2. D. 18. th. 5. lit. D. Obſ. 7.* [5] *§. 1. L. 13.* modò eam petens juret *de calumnia*; [6] *7. pr. 13. §. 3. v. 13. §. 13.* quod tamen remittitur *parentibus, ac patronis*, [7] *13. §. 14.* eorumque procuratoribus, *13. §. 14.* Præſtare tenentur, quibus prætor hoc injunxit, ut ſunt, qui in re vitioſa, unde damnum veremur, jus habent; *13. §. 1. 19. pr. 9. h.* ut (1.) Dominus, etiam *minus plenus*. [8] 10 (2.) Dominus utilis, e. g. ſuperficiarius, *9. §. 4.* Vaſallus, *arg. 9. §. 4.* Emphyteuticarius, *arg. 9. §. 4. 15. §. 17.* Uſufructuarius *9. §. 5.* Creditor pignoratitius. *19. pr. 15. §. 25. h.* qui ſervitutem habent in re communi *omnes*, [9] quandoque etiam *vicinus*. [10] *13. §. 2.*

P Illis perſonis, quorum periculo eſt, *18. pr.* e. gr. Domino, ſuperficiario &c. *13. §. 8.* Creditori hypothecario, *11. in f.* inquilino, uxori, &c. *13. §. 5.* & generaliter omnibus, qui de calumnia juraverunt: judex tamen cognoſcit, *13. §. 3.* Non etiam, qui *aliud remedium* [12] habent. *v. ſupr. N. l. 13. n. 6. 20. 32. h.*

Ad præſtandam indemnitatem, ratione damni infecti, *1. L. 2. h. propter 7. §. 1. h.* quod *veremur* [12] ex vitio ædium, loci, operis, *v. 6. 7. §. 1. & f. 1. 2. 44. h. Ca. 3. q. 57. n. 31. Boc. cl. 4. d. 18. th. 60. 61.* (non etiam, *quod caſu:* [13] *43. pr. 24. §. 4. 9. 10. h.*) *in civitate* [14] vel extra illam *15. §. 1. 24. §. 9. l. 10. §. f.* ex loco publico vel privato *19. §. 1. ſoid. tamen 15. §. 10. 24. pr. h.*

B Forma * generica eſt, quod fiat * *repromiſſione*, [15] ſive nuda cautione, ab illis, a.
C qui proprio nomine hanc cautionem præſtant, *7. pr. 30. §. 1. h.* ut (1.) dominus: *13. §. 8. L. 9. §. f. 10. h.* (2.) b. f. poſſeſſor *13. pr.* (3.) qui propter ſervitutis uſum in fundo alieno opus fecerunt, repromittunt reſpectu illius operas *39. §. 3. 13. §. 1. h.*

c. * Satisdatione ab illis, qui alieno nomine cavent, *l. 1. qui ſatisd. cog. 7 de prætor. ſtip.* ut ſuperficiarii, *9 §. 4.* Vaſalli. Emphyteuticarii, *arg. 9. §. 4.* Uſufructuarii, *9. §. f.* Creditores pignoratitii. *15 §. 25.* Et generaliter omnes, qui non habent dominium *arg. 9. §. 4. L. 15 §. 25. excepto caſu* [16] *L. 30. §. 1.* Si de dominio dubitetur, ſatisdandum *ſub conditione*, [17] *7. pr. 22 §. 1. 31. §. 1. h.*

b. * Specifica: ut in definitione: formula hæc eſt: ſi quid damni, ædium, loci, arborum vitio acciderit, illud præſtare ſpondes? *24. §. 9. h.* Adjici plerumque A
ſolet *dies*, [18] *13. §. f.* qui in locis * privatis determinatur a Prætore ex circumſtantiis: *13. §. f. h. 15. §. 1.* * publicis à lege determinatur X. *annorum*. [19] *15. §. 2.*

Inde deſcendit *actio ex ſtipulatu*, [20] ad omne intereſſe, *28.* quod tamen modicè æſtimandum, *30. §. f. v. 40. h.* E

a. * (2.) *MISSIONEM* in poſſeſſionem * *ex primo decreto*,
D [21] ſi ſc. *cavere juſſus* [22] cautionem non præſtet. Mittit prætor, & magiſtratus municipalis, *4. §. 3.* Illos, quibus cautio fuit præſtanda, ſi plures petierint, omnes æqualiter: *5. §. 1. 15. §. 18.* Singulos in ſolidum: concurſu tamen faciunt partes, *15. §. 18.* nec *ex tempore* [23] habent prærogativam: *15 §. 15. h. 12. 13. de reb. aut. jud. poſſ. v. tamen 2.* [24] *C. qui pot. in pign. Perez. in C. de bon. Aut. Jud. poſſ.* In rem, cujus cauſa fuit cautio præſtanda, *4 §. 1.* totam, *15. § 12. 38. §. 1.* vel *ejus partem*. [25] *38. § 1. h. l. 15. §. 21. h.* & in rem communem, pro portione illorum, qui cavere recuſant. *5. §. 1.* Miſſus conſequitur jus in re, ſc. *pignus prætorium:* [26] *pr. de pign. act. 3. §. 1. de reb. cerum,*

qui

*qui sub* [illegible] *15.* § [illegible] & cum domino eſt in poſſeſſione; *15.* § [illegible] nec ruinoſas tenetur reficere, *15.* § [illegible]

* *Ex ſecundo decreto;* d.

C [illegible] ſc. ſi facta miſſione ex primo decreto cavere juſſus, tamen non cavet: *15.* § *16.* *Mittit Prætor,* [illegible] non etiam magiſtratus municipalis: *4.* § *3.* & *4.* Hodie, qui habet inferiorem juriſdictionem, prævia nova cauſæ cognitione, & poſt aliquod intervallum a primo decreto, *4.* § *4.* *15.* § [illegible] pro arbitrio judicis. *arg.* *1.* § *2.* *de per.* [illegible]

E *lib.* [illegible] *15.* § [illegible] Ita miſſus poſſidet civiliter, & animo Domini: *15.* § [illegible] *de fund. dot.* [illegible] *de reb.* [illegible] inde habet rei vindicationem contra tertium poſſeſſorem, *7.* § *9.* [illegible] dominum poteſt ſtatim expellere, *15.* § *23.* nec prior *dominus audiatur* [illegible] cautionem præſtaturus. *15.* [illegible] (1) * Ex TANdem *allegatum in factum,* [illegible] ſi cavere juſſus id non faciat, nec ex primo vel ſecundo decreto *miſſum admittat,* [illegible] qua conventus tantum præſtare debet, quantum præſtare oporteret, ſi cautio præſtita fuiſſet, *15.* § [illegible] Eam dare Prætor, Miſſo, qui non eſt ab adverſario admiſſus, & heredibus, *17.* § *3.* Adverſus eum, qui a prætore

d. miſſum non admiſit, & heredes, *17.* § *3.* Ad id, quod *cautione præſtita* [illegible] reus præſtare debuiſſet. *15.* § *36.* Eſt perpetua, *17* § [illegible] *de O. & A.* Concurrit cum hac

SS electivè, actio publiciana, & interdictum, *unde vi.* [illegible] *15.* [illegible]

## *Notæ variorum.*

[illegible]

(1) [*Profeſſionaler*] [illegible] Borg. [illegible] *l. 24.* [illegible] *Borger.* [illegible] *Ad* [illegible] *Borger.*

(2) [*Comparere*] [illegible] *Borg.*

(3) [*Municipalis*] [illegible] Prætorem, [illegible] *l. 26.* *Borg.* [illegible] *l. 26.* § *1.* [illegible] *Borger.*

(4) [*Ad peremtionem*] [illegible] *Borg.*

(5) [*Ubil. 7*] [illegible] *Borg.* [illegible] *l. 7* [illegible] *l. 13.* [illegible] *Borger.*

(6) [*De cautione*] [illegible] *Borg.*

(7) [*Patronatus ac Patronus*] [illegible] *Borg.*

(8) [*Mittat plenius*] [illegible] *Borg.*

(9) [*Domino*] [illegible] *Borg.*

(10) [*Vicinus*] [illegible] *l. 13.* § *2.* [illegible]

(11) [*Aliud remedium*] Quod eſt *ſubſidiarium.* [illegible] *l. 13.* [illegible] *Borg.* [illegible]

[illegible]

(12) [illegible] Quae [illegible]

(13) [Quod [illegible]] [illegible]

(14) [illegible]

(15) [illegible]

(16) [illegible]

(17) [illegible]

(18) [illegible]

(19) [illegible]

(20) [illegible]

(21) [illegible]

(22) [illegible]

(23) [illegible]

(24) [illegible]

[illegible]

[illegible]

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[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

# *TITULUS III.*

## De aqua & aquæ pluviæ arcendæ.

DE *AQUA* (1) in genere agitur in 10. §. 1. 18 §. 1. h. Actio *PLUVIÆ* arcendæ eſt perſonalis, 6. §. 5 h. in rem ſcripta, qua agitur ad damnum, quod
D ex aqua pluvia, propter opus factum veremur, avertendum, & ad id, ſi
C factum eſt, reſtituendum. Introducta 1 L. XII. tab. 21. *pr. de ſtat. liber.* 21. § 5. h. [*Diſſ. Weſenb. h.*] Hinc requiritur * (1.) ut opus *ſit factum*, (2) 1 §. 1 & 13. in 1. §. 4. 15. & ſ. L. 2. § 6. h. non etiam regulariter datur propter deſtructionem, A
niſi per eam factum, quod aqua vehementius, quam natura curreret: 1. §. 22. (2.) in loco privato, (3.) ruſtico, 1. §. 19. h. (4.) privata auctoritate. 2 §. 5. L. 21. (5.) vicino non ſciente vel patiente, 19. 20. *propter* 2. §. 1 (6) non *agri colendi* (3) cauſa 1. §. 3. 15. h. * deinde (1.) quod aqua pluvia nocitura ſit, 1. *pr.* 11. 8. §. 1. *ſi ſerv. vind.* (2.) agro, 1. § 17. (3.) *per infuſionem*, (4) 1. § 21. h. a
*ſimile* (5) ex L. 2. §. 9. (4.) unde de damno futuro avertendo datur. 14. §. 2.
D *Datur* * *directa* (6) tantum domino, cujus agro aqua nocitura. 6. §. 4. qui ſcil. dominus eſt tempore actionis movendæ: 6. §. 4. S
b * utilis tantum *fructuario*, (7) 3. §. ſ 22. *pr.* idem eſt in ſuperficiario, Em-
C phyteuticario, &c. *arg.* 22. *pr.* * Directa adverſus dominum, 1. 6. 4. § 2. L. 16. (non etiam fructuarium, 5. §. 4. aut colonum, procuratorem, tutorem. *arg. d. LL.*) qui habet dominium tempore movendæ actionis, 16. non etiam ſi *poſtea alienavit*, (8) 26. (niſi animo *judicii mutandi* (9) hoc fecerit, tum enim intra annum poteſt conveniri, 16. *in f. h. L. 3. §. 2. d. damni jud. mut. c. fact. a. vid. L.* 14. *pr. h.* aut lis cum eo fuerit conteſtata: 4. §. 1.) quocunq; modo 12. * Utilis *contra fructuarium*, (10) &c. *d. LL.* P
c Ad * operis *alius deſtructionem*, (11) & priora formæ reſtitutionem, idque propriis O
D facientis ſumtibus, 6. § 6. 4. § 2. 11 §. ſ. 12. h. Si adhuc poſſideat; verum poſt alienationem non novus dominus, ſed actor deſtruat ſuis ſumtibus, quos tamen recuperat per interdictum, *quod vi aut clam*, (12) *ab eo, qui opus fecit.* (13) 4. § 6. 4. § 2. 5. L. 5. 11. §. ſ. 12. h. 13. ſi verò reus hic condemnatus rem non deſtruat, tum datur alia actio in factum, *ad eum interreſſe* (14) 14. § 2. h.
d * damni reſtitutionem, 6. §. 6. ſc. quod poſt litem conteſtatam contigit; nam de anteriori datur interdictum, quod vi aut clam. 4. § 6.

### *Notæ variorum.*

(1) [*De aqua*] [illegible] *ſive*, [illegible] *Principes* [illegible] *vias publicas pertinet*) per viam publicam. l. 18. § 1. ff. h. [illegible] *ne flumine navigabili* vel non navigabili aliud factum navigabile fieret, ne quid navigationi noceatur. l. 10. § 2. ff. h. per [illegible] [illegible] l. 8. l. 9. pr. & § ſ. l. 10. ff. h. Deinde de *pluviæ arcendæ actione* [illegible].

(2) [*Aut factum*] [illegible] ita ut aqua [illegible], ut purget eam, quæ aqua pluvia [illegible]. vid. l. 2. § 4. ff. h. 1 [illegible].

(3) [*Agri colendi*] Quod enim quis facit ad commoditatem agri ſui colendum, ob id vicino non datur actio. vid. in [illegible] 2. [illegible] l. 4 § 20 ſ. [illegible]. Propter ſeveram agricolturam. [illegible]

Quod ob commoditatem agri colendi, ob id vicino non datur actio.

(4) [*Per infuſionem*] [illegible] l. 2. § 4. h. quod [illegible] [illegible] 4. § [illegible]

[illegible]

# TITVLVS IV.

## De publican. & vectigalib. & commiſſis.

*Junge L. 4. C. tit. 61. 62.*

PUBLICANI (1) hic ſunt Conductores vectigalium aliorumque publicorum D
redituum: *1. §. 1. 12. §. f. 13. pr. h.* quorum *malitia* (2) hic coercetur, *1. pr. 12. h.*
Actione ex Edicto contra publicanos: quæ eſt actio prætoria, perſonalis, qua D
agitur contra publicanos, ad damnum ab illis datum, vindicandum.

Eſt prætoria, *1. pr.* oritur ex edicto, & damno, ſc. furto, rapina, damno, inju- C
ria, aut illicita exactione dato, *1. pr. 6. §. 5.* à Publicano, vel aliquo ex ejus fami-
lia, vel alio ejuſmodi: *1. pr. 12. pr. §. 2. 1. §. 5. L. 5. pr.* Datur perſonæ læſæ, *6. §. 1.* S
& heredibus aliisque *ſucceſſoribus:* (3) *13. §. f.* contra publicanos, *1. 12. pr.* ſi plures ſint, P
*pro rata;* (4) quod tamen in uno deficit, ſuppleat alter: *7.* non etiam heredes niſi
locupletiores inde factos. *4. pr.*

O Si damnum datum, per * furtum, rapinam, damnum injuria, tum datur intra A
annum in duplum, poſt annum verò *in ſimplum.* (5) *1. pr.*

* illicitam exactionem, eamque * violentam, tum da- a.
tur in quadruplum, *9. §. 5.* quod etiam rem continet: *5. §. 1. L. 9. §. 5. h.* (*Oeſ. l. 1.*
*§. 4. h.*) (6)
* non violentam, tum
datur in duplum: *9. §. 5.*

O Damno ante judicium acceptum reſtituto, extinguitur hæc actio *ipſo jure:* (7)
*5. pr.* alioquin *perpetua.* (8) *13. §. f. h.*

N Concurrit actio furti, vi bon. rapt. Legis Aquiliæ, hic electivè *1. §. 4.* Extra-
ordinaria perſecutione etiam poteſt agi ad *publicam vindictam.* (9) *9. §. 5.*

D *VECTIGAL* (10) hic in ſpecie eſt penſio, quæ pro invectione & evectione
mercium in itinere vel pontibus ſolvitur *3. C. h. 10. §. p. locat. v. Wehner. voc.* Zoll.

C Imponit ille, penes quem eſt majeſtas, & cura viarum: *10. pr. h. 3. C. vectigal. nov.*
P *inſtit. non poſſe.* Hodie Imperator, *cum Statibus:* (11) *v. Capitul. Leopold. art. 21. Carpz.*
*de L. reg. c. 8. Sixtin. de regalib. c. 8.*

Exigitur ob omnibus, *6. C.* etiam milite, *7. C.* & qui reſcriptum Principis im-
petravit; *6. in. p. C. h.* niſi ab hoc munere ſpecialiter *ſint immunes:* (12) *4. C. h.* ut (1.)
Fiſcus *9. §. f.* hodie perſonæ illuſtres, ratione victus & cultus &c. *v. Wehn. voce* Zoll.
(2.) Navicularii, *6. in f. C.* (qui publicæ annonæ cauſa res invehunt) ſi ſc. proprias
res transferant: *4. C. Parva. h.* (3.) *officiales principum* (13) *Conſtit. Imper. de anno 1500.*
*§.* Item ſollen. *Et de anno 1521. §.* Item ſollen auch. (4.) Eccleſiæ & perſonæ Ec-
cleſiaſticæ: *c. 3. de cenſib. in 6.* (5.) Profeſſores, Doctores, & *Studioſi* (14) *Aut. habita.*
*C. ne fil. pro patr.* [*Diſſ. §.*] *vid. Roland. de commiſſ. p. 4. lib. 2. c. 5. Sixtin. de regal. c. 8.*
*Klock. de jure vectig. Clarmon diſſert. de jure vectigal.* Hi tamen omnes etiam Monachus,
ſolvere tenentur vectigalia, ad viarum & pontium conſervationem, *7. C. de SS. Eccl.*

O Hic conſideranda * quantitas. Olim ſolvebatur octava pars rerum, *7. §. C.* nunc Q
cujusque loci privilegium & conſuetudo obſervanda, *4. §. 1. Co. 4. c. 41. d. 13. n. 8.*
* qualitas, non ſolvitur pars rei *naturaliter,* (15) ſed pretium. b.
*Hahn. h.* Solvitur Jur. civ. regulariter pro rebus negotiationis gratia in- & evectis,
*NON* etiam pro (1.) rebus, quæ in proprium uſum comparantur, *5. C.* ſc. ad victum &

*cult.*

*armillam*, (16) 203. *de V. S. obſ.* §. (2.) quæ ad exercitum vehuntur: 9. §. 7. (3.) rebus ad agriculturam pertinentibus. 5. *C. &c.*

*COMMISSA* ſunt, quæ ob vectigalium defraudationem prioris domini eſſe deſierunt, & *fiſco* (17) acquiſita ſunt, 14. *ff.* 11. *C. h.* Hoc fit immediatè, à Lege. (requiritur tamen ſententia declaratoria, *Gail. 2. O. 55. n. 5. hodie non.* (18) *Coppen. dec. 50. n. 11.*) ſi dolo malo. *8. 11. §. 2. 16. §. 11. h.* (hinc excluduntur (1.) ignorantes, hoc tamen caſu *duplum ſolutari* (19) *16. §. 10. 11. vid. tamen 16. §. 5. h. Gail. 2. O. 44. num. 26.* (2.) Domini ſervorum fugitivorum, *de ſe* (20) vectigal non ſolventium. 16. §. 4. (3.) aut qui propter *tempeſtatem* (21) ſolvere non poſſunt: 16. §. 8. quod DD. variè extendunt. *Hahn. h.*) res, quæ invehuntur, vel evehuntur, apud Publicanos non fuerint indicatæ, 16. §. 6. licet *alia via*, (22) vectæ fuerint. *2. C. de curſ. publ. Carpz. 2. c. 27. d. 5. n. 7.* Profeſſio, *non ſolutio* (23) vectigalis, ſub hac pœna neceſſaria eſt. *16. §. 12.*

Cadunt in commiſſum res defraudantis propriæ, 8. §. 1. 19. §. 11. *L.* 14. e.g. communis, pro parte. 8. §. *1. L. 14. Klock. de jur. vectigal. concl. 50.* *NON* etiam res domini, quarum nomine nauta vel auriga vectigal non ſolvit, ſed tantum *ejus*, (24) v. gr. equi, navis &c. *arg. 8. §. 1. 11. §. 2. f. §. 2. & §.* 11. *Bocer. de regal. c. 2. n. 111.* §. (*Diſſ. Klock. d. tract. concl. 50. lit. B. propter 60. §. 8. locat. junct. 23. de min. 10. C. de procurat. f. §. 4. naut. caup. ſtab.*)

Fiſco datur ad rem commiſſam rei vindicatio, *23. de R. V. 10. in f. ex quib. cauſ. maj.* adverſus defraudatorem, & quemvis poſſeſſorem: 14. (ſi ex ignorantia vectigal non ſit ſolutum, exigitur duplum, non tamen regulariter *ab heredibus:* (25) *v. f. §. p. pult. 16. §. 10.* hoc petitur actione perſonali) Præſcribitur illa actio *V. annis.* (26) *2. C. de Vectig. & commiſſ.*

Immunes ſunt a pœna commiſſi (1.) *milites* (27) *5. C.* (2.) Pupilli: modo intra XXX. dies vectigal ſolvant. 7. §. 1.

Soluto vectigali dominus territorialis reficere debet damnum à latronibus *datum*, (28) ſive tranſvehentes * impetraverint expreſſum ſalvum conductum, *Steph. de jurisd. lib. 2. p. 1. c. 7. n. 397. R. I. de anno 1559.* §. damit denn die Obrigkeit. modo tranſeuntes uſi fuerint (1.) via regia, *arg. 1. §. 1. de his, qui dejec. vel effud.* (2.) debito tempore, *1. §. 14. ad SC. Silan.* (3.) ea vis latronum fuerit, quæ potuerit à domino territorii *impediri*, (29) *Gail. 2. O. 64. §. Ca. p. 2. q. 91. n. 70.*

* *ſive non* (30) impetraverint, *arg. 3. 13. de offic. præſid. 1. §. 12. de offic. praef. urb. 2. §. 8. 9. C. de præfect. prætor. Afr. 44. mandat. §. f. l. ad L. Aquil. Klock. de jur. vect. concl. 77. Gail. 2. O. 64. n. 6. Myſ. cent. 5. O. 70. Roſenthal. de feud. c. 5. concl. 22.* (*Diſſ. Bocer.* (31) *de regal. c. 2. n. 154. Carpz. p. 2. q. 91. n. 61. arg. R. I. de anno 1559* §. damit denn die Obrigkeit/ ꝛc.

## *Notæ variorum.*

Publicani, per locationem conductionem conſtituuntur.

(1) [*Publicani*] Conſtituuntur locatione & conductione. quare de eorundem jure & officio juxta legem contractus ex iis, quæ titulo *Locati* dicta ſunt, erit judicandum. Quod ſi in officio delinquant, ſine dubio puniri poſſunt, ſed pœna *Romana*, quam hic recenſent, nullum hodie eſt uſus. *Tiraq.*

Publicani, de ſociorum & ſervorum ſuorum delictis tenentur.

(2) [*Malorum*] Nam de audacia & temeritate ſuſpecti eſſe dicuntur, *l. 12. ff. h.* *Mantica.*

(3) [*Interceſſoribus*] Ratione actionis contra actorem hæc eſt res perſecutoria. *Struv.*

(4) [*Pro rata*] Hoc intelligendum eſt, ſi tantum ad damni reparationem agatur: Aliud, ſi ex delicto ad pœnam ſc. ubi ſinguli tenentur, & uno ſolvente, liberantur reliqui. *Struv.*

Non aliis, non ſolum ipſe, ſed & ejus ſoc. conſortes tenentur.

(5) [*In ſimplum*] Quod regulare eſt in omnibus actionibus pœnalibus perſecutoriis, contra eum ſunt perpetuæ, *& de A. E. I. ſoll. 3. mandat. 3. ac L. Struv.*

Tenentur publicani ad damni refuſionem pro rata tenentes.

(6) [*Obſ.*

[illegible]

[illegible]

non ſit, quia pœna ad illum non tranſit, niſi ſit convictus, vel aliquid ad eum pervenerit. *Struv.*

(26) [*P autem*] Item quod tempus etiam pertinentem, quæ ex jure detractionis debetur, præſcribi DD volunt. *Mev. p. 2. dec. 163. Struv.*

Milites à vectigali immunes non ſunt.

(27) [*Milites*] Milites à vectigali immunes non ſunt, quod ſi tamen vectigal non profeſſi [illegible] ſunt à pœna commiſſi, ut tamen vectigal ſolvere adhuc teneantur. *Struv.* Utrum *pœna ſemel* pœna commiſſi obtineat, nec ne, ambigitur. Affirmativam tuetur *Mod. Piſtor. p. 2. conſ. 42. n. 16.* Negativam verò *Carpz. p. 4. c. 41. d. 1.* Non tantum enim in defraudatorem [illegible], [illegible] quæcunque [illegible] per [illegible] eſt definita. [illegible] *l. 1. 4.* 27. ſed etiam arbitraria pœna recepta eſt, teſte *Carpz. c. l. conſtit. [illegible] p. 4. qu. 24. n. 6.* atque in hanc ſententiam tanquam mitiorem & benigniorem ſum propenſior, *arg. l. 155. § 2. ff. de R. J.* niſi ſpecialiter pœnam commiſſi conſtitutio aut conſuetudo nova reduxerit. *[illegible] Ref. Germ. de A. 1661.* [illegible] 114. [illegible] *c. 5. p. 1264.* *junge* [illegible] *Locum parem de A. 1677. app. [illegible] 4. p. 91.* Cæterum [illegible] commiſſi de jure communi *adverſus defraudatorem* [illegible] *deprehenſum*, hodie plerumque *per detentionem perſonæ* defraudatoris [illegible] commiſſa, [illegible] accedit declaratoria judicis ſententia. *Zoegl. de J. Maj. l. 2. c. 12. th. 13.* Quod ſi defraudator delapſus in defraudatione vectigalis [illegible] poſtea inveniatur, [illegible] perſonali effici ſolet, nec ante quam cautionem aut ſatisfactionem præſtiterit, dimitti, [illegible] *ff. [illegible] 42. § 55.* [illegible] ſolent. bis Zoll berühre. *[illegible]* Magiſtratum [illegible] defraudatores [illegible] & pœnas legitimas ſubjicere debet, [illegible] *Ref. Germ. de A. 1661. [illegible] 114. [illegible] p.* 1064. *Mevius*

Vectigal à cujus.

(28) [*Datum*] Vectigal enim primum ob id introductum, quod dominum terrarum multos [illegible] periculo facere neceſſe habeant in expediendis itineribus & præſtanda ſecuritate, unde quoque germanicè dicitur das Geleite. Hodie Principes vectigal jure Superioritatis exercent, ut [illegible] niſi in ſpecie aliquid pro ſecuritate ſolvatur. vid. *Jo. [illegible] de jur. & commerc. [illegible] c. 9. Struv.*

(29) [*Impenderi*] Aliud ergo, ſi vis major. *Struv.*

(30) [*Erat non*] Dominus enim terrarum recipiendo vectigal tamen ſecuritatem promiſiſſe cenſetur. Si tamen Magiſtratus diligens fuerit in inquirendo, puniendo & reſtitutione damni perpeſſi procurando, verior eſt ſententia, quod dominus territorii non teneatur. *Schulz ad ff. tit. 42. § 53.* Res autem furto vel rapina alicui ablatas Superiores retinere non poſſunt, quin potius prædatis, quibus ablatæ ſunt, reſtituere tenentur. *R. I. de A. 1559. § 35. Struv.* [illegible] *R. I. de A.* 1559. [illegible] [illegible] [illegible] Argumentum à contrario [illegible] contra [illegible] argumenta non valere. *Struv.* Solutio vectigalis cum neceſſitate reſarciendi damnum [illegible] nihil habet commune, [illegible] ſolvitur ob cauſam præteritam, [illegible] ſc. viarum, [illegible] & pontium, non ob futuram, ſeu ſecuritatem. [illegible] *Autor* [illegible] vectigalis [illegible]. Quare damnum eſt reſarciendum, vel ob *promiſſum*, vel ob *culpam*, ſi hanc probari queat, quæ duæ cauſæ locum habent. Item quia vectigal non ſolvere, [illegible] cogitandum eſt, quod [illegible] obligationem [illegible], quæ ſi [illegible] ſit, ut [illegible] [illegible] de damno reſtituendo non valdè [illegible] *Titius*

Per vectigalis [illegible] ſecuritas [illegible] promiſſa cenſetur.

(31) [*Diſſ. [illegible]*] Qui enim *Carpz. c. l.* [illegible], [illegible] damnum [illegible], ſi [illegible] [illegible]. *Struv.*

# TITULUS V.

## De Donationibus.

### *Junge L. 8, C. tit. 54. 56. L. 3, t. 24. X.*

D **D**onatio (1) in genere eſt actus, quo donum in aliquem confertur. *Dividitur*

† (2) in impropriam, e. g. mortis cauſa, &c. [illegible] & propriam, ſive ſimplicem, *20. §. 3. [illegible] 20. pr. C. de donat. ante nupt.* Verum & abſolutam *35. §.*

D *1. de m. c. don.* quæ eſt gratuita alicujus rei collatio, *mera ex liberalitate*, (3) animoque nunquam *revocandi*, (4) in acceptantem facta.

D Hæc collatio fit per * conventionem, ſc. ſtipulationem, vel pactum, quod hodie eſt *legitimum*: (5) *35. §. 4. C.* * *tradit.*

* [illegible] Quæ per pactum fit, eſt pactum legitimum. (obſ. 17. [illegible] C. de [illegible] 7. C. de [illegible], quæ [illegible] 6. pr. C. de [illegible]) quo ex mera liberalitate res alicui promittitur.

C Ex * voluntate * donantis, §. 2. I. utcunque declarata, 6. C. quæ non præſumitur, ſed probanda [illegible] pr. l. 25. pr. de probat. quod item poteſt etiam per factum, e. gr. ſcientis indebiti ſolutionem, 53. de R. I. v. [illegible] §. f. l. 82. de R. I. redditionem chirographi, 2. §. 1. de pact. alia exempla [illegible] ſunt in L. 34. ff. 11. C. de N. G. 13. §. 2. de donat. inter vir. & ux. taciturnitatem in caſibus à LL. expreſſis: 20. de probat. plura habet [illegible] 7 [illegible] C. h. A D

* & donatarii: 10. hinc excluditur (1.) [illegible], [illegible] 19. §. [illegible] l. 49. de R. I. (2.) abſens & ignorans. [illegible] Carpz. 2. c. 12. d. 20. Sande lib. 3. dec. Friſ. tit. 3. def. 1. [illegible] Resp. [illegible] niſi ejus nomine alius acceptaverit, cui abſens hoc mandavit, vel ratihabuit. [illegible] C. Carpz. d. d. 20.

* & actis inſinuatione, ſi excedat 500. ſolidos: §. 2. I. quid autem ſolidus fuerit eo tempore, quo hoc conſtitutum eſt, certò non conſtat: quæ ſumma hodie inſinuanda, non omnibus convenit: quidam putant, ſi 500. ducatos [illegible] excedat Carpz. 2. c. 12. d. 12. [illegible] p. 1. d. 26. n. 30. Sande lib. 3. tit. 1. d. 3. in f. vid. [illegible] lib. 1. tit. 10. obſ. 11. [illegible] h. Non etiam, ſi plures donationes [illegible] hanc ſummam excedant. 34. §. 3. C. h. Hæc inſinuatio eſt voluntariæ Jurisdictionis, Gail. 2. O. 39. num. 14. hinc fieri poteſt etiam coram non competente [illegible] Judice, 27. [illegible] C. (Obſ. [illegible] C., vid. Gail. 2. O. 39. n. 18. Carpz. 2. c. 12. d. 11 & [illegible] Resp. [illegible] ſcabini, modo judex pro tribunali [illegible] ſedeat, & actis [illegible]. [illegible] Resp. [illegible] Etiam per procuratorem, [illegible] &c. 1. §. 2. de procurat. [illegible] vid. ſupra pag. [illegible] Quæ ſi fuerit omiſſa, vitiatur id, quod excedit, [illegible] §. f. C. h. niſi facta ſit (1.) a principe, [illegible] vel principi, [illegible] pr. C. & ſeq. [illegible] vel hodie ab alio Summo [illegible] Carpz. 2. c. 12. d. [illegible] (2.) [illegible] à magiſtratu militum, in rebus mobilibus. 36. §. 1. C. (3.) ad redemtionem captivorum: 36 pr. C. (4.) ad refectionem domus exuſtæ vel collapſæ: 36. §. 2. C. non etiam ad alias [illegible] pias cauſas [illegible] C. de SS. Eccleſ. 34. §. f. C. Carpz. 2. c. 12. d. 19. (5.) remunerandi cauſa, 27. propter ſingularia merita [illegible] Carpz. 2. c. 12. d. 15. (6.) Juramento [illegible] confirmata, Gail. 2. O. 10. §§§. (Diſſ. Carpz. [illegible] 2. c. 12. d. 14.) Neque huic inſinuationi poſſunt renunciare [illegible] partes, arg. 38. de pact. Carpz. 2. c. 12. d. 14. g B

Donare poſſunt, qui habent liberam rerum ſuarum adminiſtrationem; hinc excluduntur Pupilli, etiam cum tutore; Minor curatorem non habens, [illegible] nec cum judicis decreto, [illegible] [Diſſ. Carpz. [illegible] Resp. [illegible]] Tutores, Curatores,
C Procuratores, niſi hoc ſpecialiter conceſſum, [illegible] Filiifamilias ratione peculii * profectitii, 7. niſi pater hoc ſpecialiter conceſſit: [illegible] §. 2. quod interdum etiam tacitè
feciſſe videtur, ob ejus qualitatem, [illegible] &c. 7. §. [illegible] h. * adventitii regularis [illegible] C. de bon. [illegible] donat tamen de peculio irregulari. [illegible]
C Donationem recipiunt * qui conſentire poſſunt, hinc excluduntur furioſi, mente capti, infantes, niſi donentur [illegible] ipſis res, quas infantes æſtimare ſolent, tum enim ex æquitate ſubſiſtit donatio: Eorum nomine tamen poteſt acceptare pater, tutor, vel ſervus, &c. 26. C. de Jur. delib. [illegible] C. de A. vel R. P. D

* & non impediuntur Lege, ut (1.) conjuges, [illegible] de quibus ſupr. pag. [illegible] (2.) [illegible] in poteſtate [illegible] C. de [illegible] 17. [illegible] C. h. (niſi donet ex cauſa caſtrenſi, [illegible] C. de [illegible] aut quaſi [illegible] caſtrenſi, [illegible] C. de [illegible]

aut propter ſingulare *meritum* [10] ita ut cedat peculio adventi io. *Gail. 2. O. 48. n. 5. 6.*) Confirmatur tamen hæc donatio (1.) per ſilentium & *mortem patris*, [20] *Rummer. disc. 5. q. 9.* *l. 25. C. de donat. inter vir. & ux.* (2.) Si pater in emancipatione res *non abſtulerit* [21] *17. C. 31. §. 2. h.* (3.) per juramentum patris. *c. 2. de pa l. in 6. & 30. de jurej.* §§. *Myſ. c. 2. O. 35.* Rectè tamen donat *emancipato*, [22] *17. C. h.* ut mater omnibus liberis. *5. C. de revoc. donat.*

O Donantur omnes res in commercio, etiam incorporales, *9. pr.* & alienæ, ſcil. quoad conditionem *uſucapiendi* [23] *9. §. ſ. h. Omnia bona*, [24] *etiam futura* [25] *35. §. 4. 5. C. h. Ca. 2. c. 12. d. 24. n. 1. &c.* licet per id indirectò adimatur facultas teſtandi; nam hoc ſit etiam in *arrogatione*, [26] ingreſſu monaſterii, &c. (contra §§.) Si tamen in genere donata ſint omnia bona, *non continentur futura*, [27] *arg. 11. de donat.* licet incorporalia, (*Diſſ. Habn. h. Carpz. 3. c. 2. d. 2. n. 7.*) *49. de V. S.* §. *Carpz. 2. c. 12. d. 26.* ut igitur omnia bona donata ſint, requiritur, ut expreſsè addatur nomina & actiones, bona præſentia & futura, mobilia & immobilia. *Ca. 2. c. 12. d. 27.*

II Legis aſſiſtentia producit actionem; *35. §. 5. C. eod. §. 44. I. de R. D.* CONDICTIONEM ex lege: *35. §. 4. 5. C. h. N. 162. c. 1. §. 1.* quæ eſt actio perſonalis, qua

D donatarius & heredes agunt contra donatorem ad rem donatam *præſtandam*. [28]

N Eſt ſtricti juris: 22. Non etiam debentur uſuræ, *22 h. poſtl 3. C. de uſur. 24. de praſc. verb.* nec poſt litem conteſtatam. *De fructibus.* [29] *eod. 4. §. 1. de re judic.*

O Donatio regulariter revocari nequit. *1. pr. 3. h. l. 3. 5. 6. C. d. R. D.* revocatur tamen per querelam *inofficioſæ* [30] donationis, ſi ſc. liberis vel parentibus *legitima* [31] non II

D men ex * parte ſit reliqua; * in toto. E.

tum propter * ingratitudinem actione revocatoria, quæ datur donatori, adverſus F

C donatarium, ad rem donatam propter ingratitudinem revocandam. *Causæ ingratitudinis* [48] recenſentur, *in L. ſ. C. de rev. donat.* majores tamen *& ſimiles* [49] admittuntur. *arg. 1. §. 1. ſi menſ. falſ. mod. Eberh. in l. cap. l. 5.* (*Diſſ. Ca.* [50] *2. c. 12. d. 5. h.*)

S *Treutl. V. 2. D. 10. th. 7. obs Bach.* §. Datur donatori, non etiam *heredibus*, [51] *1. pr. 7. ſ. in ſ. C. de revoc. donat. c. ſ. X. de donat.* niſi vivens donator *revocaverit* [52] *ſ. in ſ.*

P *C. d. t.* Contra donatarium, non etiam heredes,(quia eſt ex delicto) *22. C. d. pæn. 7. in med. C. d. t.* niſi lis ſit cum defuncto *conteſtata*. [53] Ad res donatas tempore quæ-

O ſtionis apud donatarium exiſtentes, non etiam b. f. ante alienatas. *7. C. d. t.*

E * Supervenientiam *liberorum*, [54] *8. C. de revoc. donat. v. 10 1. de condic. & demonſtr. 30. C. de fideic. 6. C. de inſt. & ſubſt.* nam pater liberos non habens, ſub conditione donaſſe videtur: *dd. LL. Carpz. 2. c. 12. d. 32. Finckelth. obſ. 30* (*Diſſ. Bachov. Lauterb. Rummer.*) modo donata ſit res *maximi momenti*. [55] *Ca. 2. c. 12. d. 32.* Hanc revocationem poteſt pater *remittere*, [56] liberi qui tamen poterunt nihilominus querela inofficioſæ donationis agere, ſi *quartam* [57] non habeant. §. (*Diſſ. Ca.* [58] *2. c. 12. d. 33.*)

## *Notæ variorum.*

(1) [Donatio] Hæc cum ſuis ſpeciebus omnibus [illegible] Cum donationem [illegible] ſpectari poſſit (1) *Donationis actus*, quæ ſpecificè traditur in D. D. C. E. F. O quæ omnia ſunt [illegible] juris Germanici, hoc excepto, quod *Romanis* [illegible] (1) *quod donatio modo ſit contractus, modo pactum legitimum* [illegible] [illegible] ut *aliquem* [illegible] [illegible] [illegible] cum paſſim & contractus [illegible] [illegible] à [illegible] & [illegible] *Romanis* [illegible] [illegible] (2) *quod donatio* [illegible] *ſit confirmanda*, [illegible] C. [illegible] [illegible]

[illegible]

2, [illegible]

3, [illegible]

4, [illegible]

5, [illegible], Quas lege [illegible]

6, [illegible]

[illegible]

[illegible]

[illegible]

[illegible]

(25) [illegible] Unde regulam formant DD. [illegible]

(26) [illegible]

(27) [illegible]

(28) [illegible]

(29) [illegible]

(30) [illegible]

(31) [illegible]

(32) [illegible]

(33) [illegible]

(34) [illegible]

[illegible]

[illegible]

Imo testamento factum non est jure principum, sed permissum, huic si quis solis testari non tenetur. *Arr.*

Donatio est stricti juris.

(43) [*Non contrahentur futura*] Donatio enim est stricti juris, & sic ad *praesentia* tantum restringenda, v. C. C. *fol.* 3 c. 9 § 4. *Berg.*

Donator [illegible]

(44) [*Praestandum*] Ita ut nullam aliam rem vel aestimationem praestare possit, quam illam, quam donavit. Hinc enim est obligatio dandi, à qua praestando recedere nemo liberatur, § 2. *I. h. t. Berg.*

(45) [*De fructibus*] *Conferuntur* non praestantur, sed tantum *censentur*, qui semper cum re tribuendi, nisi quos fructus voluntate donantis expressa percepere, exemplum est in usufructuario. *Berg.*

Omne quod laedit legitimam, dicitur inofficiosum.

(46) [*Inofficiosa*] *Inofficiosum* in jure dicitur omne illud, quod laedit legitimam. Quicquid enim donando perdidit neque hoc nec laedendo. *Berg.*

(47) [*Legitima*] Ex hoc argumento revocari à liberis potest, quod pater charius laesum perdidit, sc. ut suppleatur legitima. *Berg.*

(48) [*Ingratitudinem*, Sc. periculum *famae, vitae & bonorum*. Habetur quidem in *ult. l. f.* adhuc alia revocationis causa, si sc. conditionibus adjectis quae non servet, verum haec ad ingratitudinem non pertinet. *Berg.*

In poenalibus non facile admittenda extensio.

(49) [*Et similes*] Admitto hoc, si sub expressis comprehendantur, causae enim plane *diversae* non sunt admittendae, cum in poenalibus non facile permittenda sit extensio. Imo vix fingi potest ingratitudo, quae non referri possit ad illas species. *Berg.* Ex reservatione omnium bonorum donatarius, qui usumfructum sibi non reservavit, si eidem ad inopiam redacto denegentur alimenta necessaria & pro modo exercitae liberalitatis aequa, *a. l. 4. ff. de agnosc. & al. lib. Clar. c. l. a.* [illegible] *Huber. prael. ff. h. pos. 7.* Apud nos secundum *Carpz. p. 2. c. 12. d. 31.* similes causas non admittendas videtur tutius esse, quam contrarium. *Mevius.*

(50) [*Dn. Carpz.*] Qui plane nullam extensionem, vel ad similes, vel ad majores admittit, propter *l. ult. C. de revoc. donat. ubi dicitur Ex his enim tantummodo causis donationes factas everti concedimus. Berg.*

(51) [*Heredibus*] Donator enim moriendo & non revocando, remisisse videtur injuriam illatam, modo spatium conquerendi supervixerit. *Berg.*

(52) [*Revocationem*] Et sic querelam incoeptam. *Berg.*

(53) [*Contestatam*] Tunc enim obligatur ex quasi contractu, qui ad heredem transit. *Berg.*

Ob supervenientiam liberorum revocari potest donatio.

(54) [*Liberorum*] *Alleg. l. 8.* loquitur quidem tantum de donatione inter libertum & Patronum. Verum ratio, quae in favorem liberorum conficta est generalis, *conf. Mathesium et Tiraquell. ad h. l. 8. Berg.* Quid? Si nati liberi mox post donationem vivo donatore, iterum decesserint, an convalescit donatio? *N. l. 8. C. de revoc. donat.* ubi *in arbitrio donatoris arbitrio & donatio mansurum.* Accedit, quod alias, quae donatario competerent, subtrahi possent à donatore libere, fraude conclusa eventu non subeunte, *l. 66. § 1. de legat. 2. l. 98. §* [illegible] *de solut. Wesenbach. p. 2.* [illegible] *16. 14. Berger.*

(55) [*Munere modico*] Quod determinandum pro conditione & qualitate personae donantis. *Berg.*

Huic renunciare donator potest.

(56) [*Renunciare*] Renunciatio enim conditionem hanc tacitam donat. *Carpz. p. 2. c. 12. d. 33. Fach. contr. l. 3. c. 84.* In contrariam sententiam inclinasse *Carocedes* recenset *Mynsing. cent. 5. o. 63. n. 3. Mevius.*

In praejudicium legitimae nulla valet patris renunciatio.

(57) [*Quartam*] Vel hodie *trientem* aut semissem pro numero liberorum: Nam in praejudicium legitimae nulla valet patris renunciatio. *Diss. de facto defuncti ab herede non praestando. c. 2. n. 40. Berg.*

(58) [*Dn. Carpz.*] Concedo hic equidem, integrum esse liberis, non obstante renunciatione patris, ad legitimam agere. Neque autem revocatione donationis ex supervenientia liberorum non posse valide renunciari, quia necessarium est, patrem de liberis cogitasse, qui donationem valere voluit, et neque verum videri debeat praesumi, nec possit quae dici voluisse tacite, cum contrarium expresse est. *Berg.*

# TITULUS VI.

## De mortis cauſa donationibus & capionib.

*Junge L. 8. C. tit. 58.*

Mortis cauſa donatio, eſt donatio, qua mortalitatis cogitatione moti in caſum mortis noſtræ rem in alium conſentientem *conferimus.* (1) *l. 1. Molin. de J. & J. D. 260. n. 16. 17. Perez. h. t. n. 1. Vinn. ad §. 1. I. h. t. Cx. 5. Reſp. 55. n. 4. 5.* fit vel ſub *cogitatione* (2) mortis extra periculum, vel propter D



immi-

*[illegible]* (1) periculum: atque utrum par, vel ut res *ſtatim ſit* (4) accipientis, vel tum demum, cum mors fuerit ſecuta, *1.*

A Fit * (1.) *VOLUNTATE* ( * donantis, *1. de pact. 55. de O. & A. Barb. V. 2. D. 19.* C
B *th. 2. l. A. Ca. 3. Reſp. 12. n. 14.* qui habet *teſtamenti factionem,* (5) *32. §. 1. d. don. int. vir.*
b. *& ux. junct. 1. §. 3. de jur. Cod. 2. de leg. 1.* * & donatarii. (6) *1. de pact. 55. de O. & A. Barb. Ca. dd. ll.* (quæ etiam per nuncium, epiſtolam, procuratorem fieri poteſt) clara: *11. §. 2. de don. int. vir. & ux. Ca. 3. Reſp. 12. n. 7. obſ. 38.* (7) (hinc excluditur invitus, *10. §. 2. de donat.* abſens & ignorans: *Barb. & Ca. dd. ll.* abſenti tamen facta ſuſtinetur, tanquam *fideicommiſſum,* (8) *77. §. 26. 75. de leg. 2.*) poteſt nutu declarari. *arg. 22. C. de fideicomm. junct. f. C. h.*

a. * (2.) *SOLENNITER DECLARATA* * publicè coram Principe, vel aliis, Q
C & teſtes *non requiruntur,* (9) *31. C. de donat. 19. C. de teſtam. v. Ca.* (10) *3. c. 1. d. 35.*

c. * privatim coram V. teſtibus *f. C. h. R. I. de anno 1512.* von den Notarien / Tit. von den Teſtamenten. §. Item ſollen die Notarien. (unius abſentia vitiat totam donationem, *arg. 12. C. de teſtam. Berl. 3. concl. 2. n. 10.* nec *juramento* (11) confirmari poteſt. *Ca. 3. c. 1. d. 29.* Notarius etiam computatur in numerum teſtium, *R. I. de anno 1512. d. §. Berl. d. l. n. 18. (Z. d. l. d. 32.)* qui debent audire & videre donatorem: *Molin. lib. 1. [illegible] c. 5. num. 14. Ca. 3. c. 1. d. 30.* [illegible] *arg. 12. C. de teſtam.* *ubique una vice,* (12) *arg. f. §. f. C. de codicil. Berl. 3. c. 2. num. 19.* ſive donatio 500. ſolidos excedat, *five non* (13) *arg. f. C. de codicil.* [illegible] *de donat. n. 20. §. Ranchb. p. 3. q. 56. n. 50.* [*Diff.* [illegible] *de error. pragm. v. Barb. V. 2. D. 19. th. 9. E.*] hi etiam requiruntur in mortis causa donatione ruſtici: *f. C. Berl. 3. concl. 2. n. 9.* Cæterum ſufficiunt hic ſolennitates *teſtamentorum,* (14) e. g. tempore peſtis, *Ca. 3. c. 1. def. 33. Berl. 3. concl. 2. n. 15. 16. l. 8. 3. C. de teſt. milit. 15. h. Berl. 3. 3. c. 1. n. 17.* Hic etiam *locum habet* (15) *l. f. C. de fideic.*

* (3.) Et *MORTE* confirmata, *32. §. [illegible] h.* a.

S Donant, qui non impediuntur nec *prohibentur* (16) (ut prodigi, pupilli, etiam cum tutoris *auctoritate*) [1] Filiifamilias conſenſu patrum, *7. §. 4. de donat. 25. §. 1. h.* non ſolum res caſtrenſes, *4. pr. C. de bon. quæ lib. 7. §. f. de donat.* ſed & profectitias, *dd. LL.* & abſque conſenſu bona adventitia irregularia: *N. 117. c. 1. Berl. 3. c. 1. n. 21.* Minor *abſque curatore,* (18) & ille, qui curatorem non habet, *32. §. 1. de don. inter vir. & ux. Perez. in C. h. n. 10.* (*Obſ.* [illegible] *de* [illegible] *& var. diſp.*) [illegible] *Ca. 3. c. 1. d. 22.* Idem eſt in hodiernis *mulieribus,* (20) *arg. 32. §. 3. 1. de donat. inter vir. & ux. C. Z. 2. c. 15. d. 10. Berl. 2. c. 17. n. 78.* [illegible] (21) *arg.* [illegible] *de* [illegible] *Berl. 3. 3. c. 1. num. 26. 27.*

P [illegible] Donationem mortis causa accipiunt, qui (1.) rationis uſu *non deſtituuntur,* (22) *vid. ſupr. in C.* (2.) aliquid ex teſtamento capere poſſunt; *1. h.* tempore mortis, *22.* ut conjuges. *1. §. f. 10. de donat. inter vir. & uxor. 25. h.* pater & filius. *d. L. m. Berl. 3. c. 1. num. 32.*

O Res in commercio omnes, etiam *omnia* (23) bona, præſentia & futura. *v. Ca.* (24) *3. c. 14. d. 1. n. 7.*

R *Perfecta hac* (25) m. c. donatione, * quoad ordinationem, ſiquidem facta eſt D
* ſola conventione, donatarius tantum habet ſpem incerti lucri: *arg. 42. de O. & A.* E
*27. Qui & a quib. manum. lib. &c.* * per traditionem eo animo, ut dominium ſtatim e.
tranſeat, tum donatarius etiam ante mortem donantis habet dominium, ſed revocabile tantum. *2. 29. h.* rei vindicationem. *220. h. verb. mortis causa &c.* * abſoluté & mortis conſummata, tum * certa ſpecie donatoris propria donata, dominium irre- d
vocab-

vocabiliter tranſit in donatarium, etiam *ante traditionem,* [36] *ſ. C. h. 1. §. 2 L. 2. de poſſ. in rem.* & datur illi contra heredem *rei vindicatio.* [37] *arg. 23. de R. V. ſ. C. h. junct. 1. C. communia de legat. vid. 5. C. de legat. vid. Co.* [38] *3. c. 1. d. 37. 1. §. 3. quod legat.*

F * quantitate m. c. donata donatarius tantum habet jus ad rem, & conditionem ex Lege, *arg. 35. §. 4. 5. C. d. donat.* vel actionem ex ſtipulatu, aut actionem *ex teſtam.* [39] *arg. ſ. C. h. junct. 1. C. communia de legat.*

G Diſſolvitur perfecta quoad ordinationem * (1.) *pœnitentia,* [30] *§. 1. I. L. 30 ff ſ. C. h. 4. de adim. leg.* (niſi *aliter conventum* [31] ſit, *27. h. Molin. de I. & I. D. 267. n. 15.*) quæ declaratur verbis vel literis vel facto e. g. ſpontanea alienatione, *arg. 18. 24. §. 1. de adim. legat. junct. 31. pr. ff & ſ. C. h. 22. de don. inter vir. & ux. Berl. 3. concl. 2. n. 41.* vel ea re alteri legata: *Perez. h. n. 9. Berl. 3. concluſ. 2. num. 44.* (non etiam ſi poſt donationem rei ſingularis aliquem heredem *omnium bonorum* [32] fecerit. *Molin. d. l. n. 11. Berl. concl. 2. n. 44.*) ex capitalibus *inimicitiis,* [33] *arg. 3. de adim. legat. 9. de his, quæ ut indign. Moller. lib. 2. ſemeſtr. c. 31. §. Berl. 3. c. 2. num. 45.*

* (2.) *morte donatarii* [34] ante mortem donantis, tum enim ipſo jure *extinguitur* [35] *§. 1. I. de donat. 19. pr. de R. C. 29. h.* ſi ſimul moriantur, in dubio *ſimul mori* [36] *26. h. 18. 1. ſ. pr. de reb. dub.* Si filio, &c. do-

H natum ſit * intuitu patris, ſimil &c. tum *patris mors* [37] attenditur: *23. & ſ.*

h * ut filio & principaliter, (quod in dubio præſumitur, *ſ. C. de uſufr.*) tum filii mors obſervatur: *23. h.* hodie indifferenter, filii mors attenditur, nam quæ extraneus *ipſi donat,* [38] non acquiruntur patri. Unius portio accreſcit *reliquis,* [39] *L. un. §. 14. C. de caduc. toll. vid. Grot. de I. B. P. lib. 2. c. 11. n. 16.*

I (3.) Reconvaleſcentia ſive liberatione à periculo, *§. 1. I. de donat.* modo tempore donationis tacitæ, fuerit *in periculo* [40] &c tum etiam revocatur ipſo jure reconvaleſcentia, *Perez. c. h. num. 10.* Et tradita res eo animo, ut donatarii ſit * ſubſecuta morte directè vindicatur ab omni poſſeſſore: * ſtatim tempore donationis, *2. h.* repetitur condictione cauſa data, cauſa *non ſecuta,* [41] *35. §. 3.* vel utili rei *vindicatione,* [42] *29. 30.* ſi verò hic rem b. f. alienavit, poteſt donator condictione pretium à donatario, vel vindicatione rem à tertio petere. *37. § 1. 30. h.* Donatarius propter expenſas neceſſarias hic habet *jus retentionis,* [43] *14. h.*

Sæpe etiam donationis inter vivos præſtatio confertur *in caſum mortis,* [44] *u. ſ. C. quæ res pign. Co. 5. Reſp. 55. n. 4. 5. L. 27. h.* (*diſſ. 15.* [45] *§. 1. 35. §. 4.*) SS

## Notæ variorum.

(1) [*Conferentur*] *Revocabitur, &c. quamdiu vivit donator. Bergſ.*

(2) [*Cognatione*] Verbis tamen expreſſa. *Quacumque enim ex iure ſola cognatione ordinantur, illa ſemper ſupponunt verbis vel facto ſibi eſſe declarationem.* Exemplum in l. 5. C. ad L. Jul. Maj. *Bergſ.*

(3) [*Eventum*] &c. tempore conſequente, & ſi hoc [illegible], præſumuntur, morte civili ſolùm illic donatum. *Bergſ.*

(4) [*Eventum ſint*] Dominium tamen in hoc donatione ſub conditione nondum transfertur, ſi ſc. in eadem voluntate ad mortem uſq; ſubſiſtere donator, & ſic eadem ut donatum non impedit permanente. *Bergſ.*

(5) [*Teſtamenti factionem*] Promiſit hoc *affirmativè: Quicumque teſtamentum facere poteſt, poteſt etiam mortis cauſa donare.* Non *negativè* ſufficit enim hic libera bonorum adminiſtratio. Nec pœnitet cogitur, ut ſit paterfamilias, quod tamen in teſtamento neceſſarium. *Bergſ.* Poſterior ſive *affirmativa* hoc procedit, quia enim facultatem reſcindi habet, illi facultas donandi negari neque, nam non debet, cui plus licet, quod minus eſt, non licere, *l. 21. de R. J.* Hinc etiam mulieribus & mulieribus [illegible] ille [illegible], nec hoc caſu [illegible], ut quo liberam rerum ſuarum adminiſtrationem quoad alias non eam habent. *Negativè* tamen non procedit, nam hæc [illegible]

Que reſpi- ſe rati ad bonorum, ſi [illegible] [illegible] eſt [illegible] ſufficit.

Mortis cauſa donatur ſi [illegible] habent [illegible] quod *affirmative*, *negative* [illegible]



quia

quae facultatem [illegible] non habent, [illegible] donare possit mortis causa [illegible] ad [illegible] [illegible] [illegible]. quae [illegible] mortis causa [illegible] habent [illegible] voluntatem [illegible], [illegible] vel facultas testandi vel libere [illegible] ad [illegible] [illegible] [illegible], ut in pupillo, de donatione illa sunt [illegible]. [illegible]

Donatio ea quae [illegible] ad [illegible] ad [illegible].

(6) [Donationes] Unde apparet, [illegible] mortis causa, quantum ad modum [illegible], referendam esse ad contractus, [illegible] voluntatem exigunt. [illegible] legatum, [illegible] quod [illegible] possit. Accurs.

Quae per [illegible] [illegible] [illegible] [illegible] [illegible] [illegible].

(7) [Obl. 38] [illegible] praesentia [illegible] [illegible] [illegible] esse credebant, quae per procuratorem [illegible], vel per nuntium acceptat. Mohn ad Wes [illegible] ad verba, etiam per procuratorem. Quod etiam quia per [illegible] [illegible], [illegible] possunt. Accurs. Vel sic. Loquitur vel, [illegible] de praesenti corpore [illegible] [illegible], sed de praesenti [illegible]. Vel de eo, qui etiam corpore praesens est per se [illegible] per alium quandoque. [illegible] quoque modo [illegible] praesens est, [illegible] [illegible] [illegible] per [illegible] [illegible] per interpositam personam. Vel [illegible] de [illegible], quod [illegible], vel denique donationem mortis causa apparet mortis causa capionem. [illegible] est [illegible], quae legem, quod [illegible] [illegible] [illegible], de [illegible] mortis causa capio intelligitur. Accurs.

(8) [Fideicommissum] [illegible] [illegible] [illegible] testamentum, [illegible] in donatione [illegible] facultas testandi, vel fideicommissum [illegible], donare etiam mortis causa [illegible] possit de [illegible] ad [illegible] [illegible], quod [illegible] est in [illegible]. Accurs.

Quando [illegible] [illegible] [illegible]?

Procedit [illegible] [illegible] [illegible] voluntatem [illegible] [illegible].

(9) [Non requiruntur] Quo casu etiam sine [illegible] [illegible] testamentum, eo casu etiam donatio mortis causa. Accurs.

(10) [Ad Corp.] Donatio mortis causa est [illegible] [illegible] voluntatem, [illegible] est in [illegible] [illegible] [illegible] [illegible] [illegible] in donatione mortis causa. Accurs.

Donator [illegible] [illegible] possit [illegible] [illegible].

(11) [Iuramento] Quia [illegible] [illegible] est de forma. [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]. [illegible] [illegible] [illegible] [illegible] testamento [illegible] habere [illegible] [illegible], [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] voluntatem [illegible] [illegible] [illegible] [illegible], [illegible] [illegible] [illegible], vel. l. cum pater 77. ff. de leg. 2. Accurs.

[illegible] [illegible] [illegible] [illegible] [illegible].

(12) [Idque eum voro] [illegible] [illegible], [illegible] [illegible] l. [illegible] C. de [illegible] [illegible] [illegible], [illegible] l. 2. §. 6. ff. quae [illegible] [illegible] l. c. d. 30. Accurs.

[illegible] [illegible] [illegible] [illegible] [illegible].

(13) [Ante eos] [illegible] [illegible] [illegible] [illegible], [illegible] [illegible] [illegible] [illegible]. Accurs.

(14) [Testamentorum] [illegible] Quo casu etiam [illegible] in testamento [illegible], eo casu etiam in donatione mortis causa. Ergo potest [illegible] mortis causa [illegible] donare [illegible] [illegible]. Idem est in donatione [illegible] causa. [illegible] tamen [illegible] in testamento [illegible] [illegible], [illegible] [illegible] [illegible] [illegible] in codicillo, vel donatione mortis causa, [illegible] [illegible] testamentorum [illegible] [illegible] [illegible] [illegible] [illegible]: ergo codicillus [illegible] [illegible] [illegible] [illegible]. Accurs. [illegible] [illegible] [illegible] [illegible] [illegible] Principe, arg. l. 19. C. de [illegible], [illegible] [illegible] [illegible] [illegible] arg. l. 31. C. de donat. [illegible] [illegible] [illegible] [illegible], [illegible] [illegible] [illegible] [illegible] in donatione [illegible] [illegible] [illegible] esse, cum [illegible] in testamento [illegible], Corp. [illegible] l. 26. 28 ad [illegible] [illegible] in [illegible]. [illegible] [illegible] [illegible] [illegible] [illegible] per procuratorem facta valet. l. 27 [illegible] [illegible] [illegible], quae [illegible] est [illegible] donata, [illegible] [illegible], [illegible] [illegible] [illegible], [illegible] l. 35. Mencken.

Quae [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible].

(15) [Locum habet] Quod [illegible] donatio [illegible] [illegible] [illegible] [illegible], [illegible] praesens [illegible] [illegible] [illegible]. Accurs.

(16) [Prohibentur] [illegible] Quibus [illegible] [illegible] [illegible] [*] [illegible]. Accurs.

[* [illegible] [illegible] [illegible]]

[illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible].

(17) [Antecedens] Quia [illegible] donandi facultas non [illegible]. Pupillus [illegible] [illegible] [illegible] [illegible] [illegible], neque donare possit, quod [illegible] [illegible]. Accurs.

(18) [Absque curatore] [illegible] ad [illegible] [illegible] voluntate, [illegible] [illegible], curatoris [illegible] non requiritur, [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]. [illegible] ad Wes. [illegible] Accurs.

Ad [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible].

(19) [Obs. l. § 1] [illegible] [illegible] [illegible] [illegible] [illegible], sed de pupillo, cui mortis causa [illegible] [illegible] est. Accurs. Loquitur de pupillo, de pupillo. Accurs.

(20) [Absolvendus] Ad [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible], [illegible] [illegible] habeat [illegible] [illegible] [illegible]. [illegible] l. 2. [illegible] 17. [illegible] 18. Accurs. [illegible] [illegible] [illegible], [illegible] [illegible] habeat, [illegible] [illegible] [illegible] donat. l. 2. C. [illegible] 15. § 5. [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible], [illegible] [illegible], [illegible] mortis donatione [illegible] l. 15. l. 32. l. 37. ff. [illegible] Mohn ad [illegible] l. 15. [illegible] 74. Corp. [illegible] C. l. 18. [illegible] [illegible] ff. [illegible] 45. l. 11. Mencken. [illegible] donationem [illegible] mortis [illegible]. [illegible] [illegible], [illegible]

[illegible] [illegible] [illegible] [illegible] [illegible] [illegible].

[illegible] [illegible] [illegible] [illegible] [illegible].

[illegible]

(21) [illegible]

(22) [illegible]

23 [illegible]

(24) [illegible]

(25) [illegible]

(26) [illegible]

(27) [illegible]

(28) [illegible]

29 [illegible]

[illegible]

[illegible]

LIB.

# LIBRI XL

## Hodie nullus eſt uſus.

TIT. I. De manumiſſionibus.
TIT. II. De manumiſſis vindicta.
TIT. III. De manumiſſionibus, quæ ſervis ad univerſitatem pertinentibus imponuntur.
TIT. IV. De manumiſſis teſtamento.
TIT. V. De fideicommiſſariis libertatibus.
TIT. VI. De ademtione libertatis.
TIT. VII. De ſtatu liberis.
TIT. VIII. Qui ſine manumiſſione ad libertatem perveniant.
TIT. IX. Qui & à quibus manumiſſi liberi non fiant, & ad legem Æliam Sentiam.
TIT. X. De jure aureorum annulorum.
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TIT. XII. De liberali cauſa.
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TIT. XIV. Si ingenuus eſſe dicetur.
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TIT. XVI. De colluſione detegenda.

*Pagenſtecher. man. 3.*

# LIBER XLI.

## *TITULUS I.*

## De acquirendo rerum dominio.

*Junge L. 4. C. Tit. 27.*

D **D***ominium hic* [1] proprie eſt jus in re, quo res alicujus eſt propria. *Acquiritur* [2] modis naturalibus (*de civilibus agetur infra tit. 3.*) §. 11. *I.* qui ſc. naturali ratione ab omnibus gentibus approbati: ut ſunt * *APPREHENSIO* rerum, quæ ſunt * nullius: (*cenſura*, [3] *facto*, [4] *natura* [5] *tempore* [6] *caſu*, [7] res in nullius dicitur eſſe bonis: Huc *non pertinent* [8] res cenſura vel caſu nullius,) *hæc dicitur OCCUPATIO*, [9] & eſt apprehenſio earum rerum: quæ actu

(margin: A, B, D)

actu nullius ſunt, fieri tamen aliquis poſſunt animo domini facta: *arg.* [illegible] *de O. & A.* [illegible] (*[illegible]*) quæ eſt

† vel * *VENATIO* ſive occupatio ferarum beſtiarum; cujus ſpecies ſunt aucupium, C
piſcatio & venatio ſtricte dicta, *vid.* [illegible] *Pract. Cam.* [illegible] in fundo alieno, qui *prohibente domino* [illegible] venetur, tenetur actione injuriarum, [illegible] *de injur.* [illegible] captam tamen acquirit. [illegible] *de* [illegible] *Grot. de J. B. P.* [illegible] *Sixtin. de regal.* [illegible]

* *INVENTIO*, qua acquirimus res inanimatas nullius * natura; ut gemmas &c. c.
D in littore maris: [illegible] *DD. ad L.* [illegible] * tempore, Theſaurum: D
qui eſt pecunia, res pretioſa mobilis, *L. un. C. de theſ.* [illegible] *de V. S.* d.
ſtricte [illegible] *C. de* [illegible] *depoſita*, [illegible] *de A. vel A. P.* [illegible] *ad L.* [illegible] quæ propter vetuſtatem [illegible] [illegible] *Speidel.* [illegible] gefunden [illegible] alicujus eſſe deſiit, & nullius eſſe cœpit. [illegible] Acquiritur theſaurus Jure Gent. inventori, [illegible] noſtris moribus *ſisco* [illegible] *Grot. de J. B. P.* [illegible] & quibusdam in locis, generaliter autem non eſt abrogatum Jus civilium obſervatur circa hanc materiam adhuc in Hiſpania. [illegible] Galliæ, [illegible] noſtro Imperio *Sixtin. de regal.* [illegible] Jure civili, ſi inventus eſt theſaurus in loco privato * proprio, totus cedit inventori, [illegible] *L. un. C. de theſaur.* licet habeat tantum dominium [illegible] *de R. V.* (propter dotis favorem autem ſoluto matrimonio maritus dimidium reſtituet uxori [illegible]) licet etiam alius circa illum locum habeat jus ad rem, *ut emtor* [illegible] *de O. & A.* [illegible] (*[illegible]*) vel [illegible] *de V. S.* [illegible] *de A. vel A. P.* [illegible] Idem dicendum de Jur. civ. de Vaſallo, Emphyteuticario, & Superficiario: [illegible] tamen quoad hos, contrarium obſervatur, [illegible] (ſi ſervus communis in fundo unius domini invenerit, [illegible]) modo [illegible] hoſtis attinuerint: alius enim fisco cedit, [illegible] * alieno,

e. data opera, *etiam illicite* [illegible] *L. un. C. de theſaur.* [illegible] totus fundi
f domino acquiritur, [illegible] & tum ſuper quantitate juramento ſignificari debet, aliquando etiam tortura [illegible] Dominus
f. [illegible] *actione ad exhibendum.* [illegible] * caſu fortuito, tum cedit dimidium inventori, dimidium domino, [illegible] quod dominus ab inventore petit rei vindica-
d. tione, [illegible] * Facto: res pro derelicto habita, quæ fit (1) *deſtinatione* [illegible] (2) eo animo, ut dominus eas amplius nolit [illegible]
[illegible] * alicujus * hoſtis:

h. quæ dicitur *occupatio bellica* [illegible] *de captiv. & poſtlim.* * nobiſcum contra- D
hentes, quæ [illegible] *TRADITIO* eſt rei & poſſeſſionis transla- |
tio. [illegible] Nuda eſt quæ poſſeſſionem transfert ſine titulo ad dominium transferendum habili. Hæc in dubio per vocabulum traditionis intelligitur [illegible] *de V. O.* Non nuda fit ex juſto titulo, & cauſa ad dominium transferendum habili. [illegible]
*de A. R. D.* Hæc in ſpecie dicitur datio, [illegible] *de V. O.* & eſt hujus loci. Ac eſt D
actus, quo à domino poſſeſſio ex juſta cauſa ad dominium transferendum habili, in accipientem transfertur. * Vera fit [illegible] reali, naturali, & corporali. [illegible]

mobilibus de manu in manum, in immobilibus, *per inductionem* [illegible] * Ficta, quæ juris intellectu interveniſſe fingitur: fictione * brevis manus, [illegible] *de don. inter vir. & ux.* [illegible] *de jur. dot.* [illegible] *de reb. cred.* conſtituto poſſeſſorio, [illegible] *de A. vel A. P.* ſi ſc. venditor *nomine emtoris* [illegible] rem incipit poſſidere. *vid. Tiraquell. de conſtit. poſſeſſ.* [illegible] * *longa manu* [illegible] *de ſolut.*

C Cauſa efficiens eſt voluntas tradentis, [illegible] *de A. vel A. P.* & accipientis, *propter* [illegible] *de O. & A.* [illegible] *de A. vel A. P.* ex juſto titulo, & habili ad dominium transferendum, [illegible] *de contrah. emt.* [illegible] C. *de evict.* [illegible] *de pign. act.* [illegible] licet *erroneo* [illegible] *de R. C.*

S Tradendo dominium * Transfert, qui eſt dominus, [illegible] (*diſſ.* [illegible] *de uſufr.*) [illegible] *de cur. fur. Grot. de J. B. P. lib.* [illegible] qui non impeditur, ut pupillus, minor curatorem habens ( [illegible] *de V. O.* [illegible] ) nec prohibetur Lege, ut maritus rem dotalem immobilem, [illegible] *de diſſ. pign.* [illegible] *C. de reb. alien. non alien.* vel teſtamento, vel conventione, *dd. LL.*

* Acquirit, qui non impeditur, [illegible] *de A. vel A. P.* nec prohibetur, [illegible] etiam per procuratorem, [illegible] modo tradatur (1.) noſtro nomine, & ille noſtro nomine accipiat. [illegible] *de A. vel A. P.* (2.) volente domino, [illegible] hic ſufficit *generalis voluntas* [illegible] præcedens. [illegible] *pr.*

O Verè traduntur res corporales; [illegible] rectè *res incorporales* [illegible] *uſu* [illegible] & patientia transferentis. [illegible] *de uſufr.* [illegible] *de ſerv.* Interdum etiam res corporales, propter commoditatem. Poſſeſſio autem transfertur naturaliter, etiam *oculis*, [illegible]

Q *de A. vel A. P. Symbolice* [illegible] *de contrah. emt.* aut ſi venditor tradat inſtrumentum, ex quo *ejus jus dependet* [illegible] C. *de donat.* [illegible] modo tradatur vacua, [illegible] *de R. V.* [illegible] *de A. vel A. P.* ſc. à civili poſſeſſore, licet ab alio detineatur, vel naturaliter poſſideatur, [illegible] C. *de A. E.* (*diſſ.* [illegible] *de A. E. V.*) [illegible] *Schwim. ad Tit. de A. R. D.* [illegible] Traditioni adjiciuntur etiam pacta, [illegible] C. *de pact.*

[illegible] Sic transfertur dominium:

D * *ACCESSIO*, [illegible] quæ fit * extrinſecus, dicitur acceſſio in ſpecie: ſi ſc. res

D principalis propter prævalentiam ad ſe trahit rem minus principalem: [illegible] *de R. V.* Eſtque * *NATURALIS*, quæ fit natura operante (1.) in alluvione, §. 20. *I.* ſi ſc. naturali vi *fluminis* [illegible] *Barb. de jur. aquar.* [illegible] fundo, [illegible] *de flum.* [illegible] *Gipban. ad L.* [illegible] ita latenter aliquid adjicitur, ut non intelligatur, quantum quoquo tempore adjectum ſit. §. 20. Hoc quoad uſumfr. uſufructuario, quoad proprietatem, proprietario *acquiritur*, [illegible] *de uſufr.* quod ſecus eſt *in Inſula* [illegible] in flumine nata, [illegible] *de uſufr.* [illegible] (2.) in *Conſitione* [illegible] ſi ſc. pars vicini prædii vi fluminis, detracta, meoque fundo adjecta cum eo coaluerit: [illegible] radicatione arborum *dd. LL.* & tum nullum remedium priori domino *ſuper eſt* [illegible] *de damn. infect.* ( *Bach.* concedit utilem, *R. Vindicationem ad* [illegible] propter [illegible] *de R. V.*) (3.) Inſulæ *in flumine* [illegible] productione, quod fit (α) ſi aqua prædium jam conſtitutum circumdet, hæc manet prioris domini, §. 22. [illegible] (β) ut terra flumine ſublata natet quaſi in flumine: hæc eſt publica. [illegible] (γ) ſi flumen terram ita tollat, ut tamen cohæreat cum alveo: hæc acquiritur vicinis pro portione: [illegible] hodie verò *Fiſco*, [illegible] *Gothofred. de Inſul.* [illegible] *Nov.* Meuter/ von den Waſſer-Rechten. *Bockm. de jur. aquar.* [illegible]

[illegible] niſi cum detrimento vicinorum fuerit nata. [illegible]
[illegible] Inſula nata *occupanti* [illegible] cedit. §. 22. I. (4.) Alvei deſtitutione: ſi ſc. D
alveus vetus à flumine relictus, & nova pars, alvei loco, occupata ſit: §. 23. I. [illegible]
& hic vetus ſit vicinorum, novus autem publicus: *d. l. l.* Si novus iterum ſit deſti-
tutus * paulatim, tum jure accretionis uni cedit. [illegible]

* uno impetu, tum idem juris eſt, quod in veteri. [illegible]
[illegible] & hoc de jure ſtricto, licet exiguo tempore fuerit occupatus, *d. l. l.* [illegible]
Ex æquitate tamen domino priori redditur. [illegible] *Plan. & Fr.*
*ad §. 23. I. de R. D.* Hodie alveus relictus fiſco cedit. [illegible]
[illegible] Inundatio v. *Fr. ad §. 24. I.* [illegible] * Simplex. Si e. g. torrentibus auctum flumen in D
campos ſe effuderit, retento nihilominus ſuo alveo, [illegible] *de flumin.* non interver-
tit dominium, [illegible] nec ſervitutes, nec poſſeſſionem. [illegible]
[illegible] *A. R. D.*

* non ſimplex, cum ſc. flumen totum, uno impetu
alveo deſerto, in agrum aliquem ſe effundit, ita quidem, ut dubium eſſe poſſit, an
flumen in eo agro (ſit manſurum) proprietatem [illegible]
[illegible] *de R. D.* [illegible]

* ARTIFICIALIS * eſt, quæ opera ho-
minum perficitur, ut (1.) * ADJUNCTIO, *quæ res acceſſoria* * jungitur principali: D
& ejus ſit, cujus eſt principalis. [illegible] Sic
* ædificium cedit ſolo. [illegible] ſc. quod *pleno jure* eſt noſtrum [illegible] Si e-
nim quis ædificat * (1.) ex aliena materia in * ſuo ſolo, tum ædificans ædificii ſit do- L
minus, §. 29. I. [illegible] *de A. R. D.* materia tamen in ſe conſiderata manet prioris do- M
mini. [illegible]
Inde datur domino, ſi eo ſciente ædificatum, actio in ſimplum [illegible]
[illegible] Sin eo ignorante ædificatum * bona fide N
* ſtante ædificio, non vindicatio, * nec ad exhib. [illegible] ſed a- O
ctio de tigno juncto, *in duplum*, * (quæ hoc caſu eſt mixta) * [illegible]
actio in factum, ſi velit dominus, aut æſtimatoriam, [illegible]

* diruto vero ædificio, rei vindicatio, licet ædificium fuerit uſucaptum: [illegible] O.
[illegible] modo duplum *non* [illegible] ſit conſecutus. [illegible]

* mala fide, ædificio * ſtante, actio de tigno juncto, in duplum, quæ P
eſt mere pœnalis [illegible] cum qua [illegible] concurrit actio furti, [illegible]
[illegible] vero [illegible] vel rei vindicatio, vel ad exhi-
bendum [illegible] cum dolus pro poſſeſſione [illegible] ad hoc
ſc. ut contra illum [illegible]

* extinctio, extinguitur actio de tigno juncto, reliquæ [illegible] manent. P.
* alieno ſolo, tum ædificium ſolo cedit, nec ſunt domino Q.
materiæ contra novum dominum actiones, niſi diruto ædificio [illegible]
[illegible] ſunt tamen [illegible]

* (2.) Ex ſua materia in ſolo * ſuo, & res clara eſt. [illegible] L
[illegible]

* alieno, & ædificium ſit ejus, cujus eſt ſolum, [illegible]
[illegible] ædificator autem, qui * b. f. ita ædificavit, manet dominus
materiæ, [illegible] hinc * poſſidens habet [illegible] contra dominum ſoli
[illegible]

* Domino fundi autem poſſidente habet *actionem* (71) negotiorum geſtorum. 6. §. 3. L. ſ. de N. G. ſ. §. 1. C. de her. pet. [ *Diſſ. Barb. propter* 33. *de cond. indeb.* 14. *de dol. mal. exc.* 48. *de R. V. Sorom. de jur. aedif. priv. th.* 18.] 33. in f. de R. C. & actionem *in factum,* (72) 23. §. 5. de R. V. & condictionem *indebiti,* (73) ſi per errorem omiſſa exceptione, domino rem reſtituerit, ad repetendam poſſeſſionem indebitè traditum. 40. §. 1. *de cond. indeb. vid. Fr. Ex.* 4. q. 5.

q. qui * mala fide ita ædificavit, materiæ dominium amittit; §. 30. I. ſi tamen ædificium poſſidet, * ipſe habet *ex aequitate,* (76) v. §. 30. *in f. I. h.* doli mali exceptionem, 38. *de her. pet.* ac tollere poteſt ædificium, modo fiat ſine prioris ſtatus læſione. 37. 38. *de R. V.* * Dominus fundi, datur ædificatori utilis N. G. in quantum locupletior dominus factus eſt. 6. §. 3. *de N. G.* (*diſſentiunt* (77) communiter) Diruto ædificio, materia redit *ad ſuum dominum* (78) ſive b. ſive m. fide ædificatum, niſi donandi animo ſic ædificatum ſit, 2. C. *de R. V.* §. 30. *I. h.* quod in m. f. poſſeſſore præſumitur, §. 30. *I.* niſi ex circumſtantiis aliud appareat, e. g. ſi ſit in conditione *uſucapiendi,* (79) *dd. LL.* 15. *pr. de uſuſr.* 61. *de donat. inter vir. & ux.* 49. §. 1. *de leg.* 1.

k * Sic ſolo *cedunt Satſa* (80) & Conſita, e. g. Semina, §. 31. 32. *I.* licet radices nondum egerint: 14. *de donat.* v. 25. §. 1. *de uſur.* Plantæ radicatæ: § 31. *I. h.* hic eadem obtinent, quæ de ædificatione dicta ſunt, niſi quod dominus plantæ contra transferentem in ſuum fundum habeat utilem rei vindicationem. 5. §. 3. *de R. V.* & quod dominus plantæ, qui ipſemet eam in alienum fundum ſive b. ſive m. f. poſuit, non habeat rei vindicationem, *licet eruta ſit* (81) 26. §. 1. *de A. R. D.* De arbore in confinio. *vid.* §. 31. (82) *ibi Vinn. I. h. & Schulz. ibid. Carpz. p. 2. c.* 38. *d.* 23. (2.)

L. * *SPECIFICATIO* eſt novæ ſpeciei in aliquam rem introductio; quod fit D

ſi. vel ex materia * in totum aliena, ad quam reduci nova ſpecies * poteſt, & tum eſt

S domini materiæ, §. 25. *I. h. L.* 7. §. 7 *l.* 12. *æſtimationem operarum* (84) autem petit ſpecifica-

a. tor rei, retentione, vel actione in factum, v. *ſupr. de aedificatione.* * non

T poteſt, & tum ſi nova forma * revera ſit facta, res pertinet ad ſpecificantem, §. 25.

*I.* licet *m. f. fecerit:* (85) *arg.* §. 26. *I. h. Barb. ad* §. 25. *I. h. Franck. ad Inſt. Ex.* 4. q. 4.

t. *vid. tamen L.* 12. §. 3. *ad exhib. Vinn. & Ludwell ad* §. 25. *J. d. R. D.* * antea jam in-

ſita, & ab alio tantum deducta ſit, tum res illa manet, cujus antea fuit e. g. vinum,

a. oleum, ex uvis, olivis, &c. 7. §. 7. * partim aliena, partim

propria, tum indifferenter acquiritur *ſpecificanti,* (86) §. 25. *I.* niſi utriusque voluntate facta ſit, tum enim fit communis. 7. §. 7. §. 26. *I. h.* (3.)

l. * *CONFUSIO* (88) eſt rerum liquidarum, ex quibus totum fit homoge- D

neum. §. 27. *I.* (4.)

l. * *COMMIXTIO* eſt rerum ſolidarum, quæ conſtituunt totum per aggre- D

gationem. §. 28. *I. h.*

* immediatè ex re noſtra: Eſt autem res noſtra vel verè, U

ſc. jure dominii, & fructus ipſo jure acquiruntur, §. 19. *I.* e. g. partus animalium, §. 19. *I. L.* 6. *de A. R. D.* licet ab alio impraegnatorum, 5. §. 2. *de R. V.* v. 25. *pr. de uſur. diſſ. Grot.* (89) *l.* 2. *c.* 8. *n.* 18. ancillarum 7. *C. de R. V.* §. 4. *I. de jur. perſon.* qui tamen *in fructu non eſt,* (90) §. 37. *I. h.*

* *vel quaſi quam b. f.* (91) poſſidemus: 136. *de R. I.* eſt autem bona fi- u.

des juſta opinio, qua quis putat, rem eſſe ſuam b. f. poſſeſſor eſt; qui à non domino, quem dominum eſſe credidit, ex cauſa ad dominium transferendum habili, rem accepit: §. 35. *I.* Utitatam hic *non eſt pro b. f. poſſeſſore:* (92) *Pbilig. ad Ex. Fr.* 4. q. 4.

*parte*

*Aversum* Ex. 4. 10. 5. nec in jure errans, 4. 7. 8. 9. *de jur. & fall. ign. Lauter.* Ex. 4. th. 6. lit. b. aut si bona fide possidens *lex obstat*, [illegible] quo minus acquirat, 190. *de R. I.* alibi enim pro b. f. possessore habeatur. 25. §. 6. *de her. pet. Fabr. ad Ex. Fr.* 4. q. 4.

*FRUCTUUM* divisionem. *NB. vid. sup. tit. A. R. V.* * Pendentes sunt pars fundi. 44. *de R. V.* 12. *in f. de usufr.* * Separati acquiruntur b. f. possessori, §. 35. *I. h.* licet separatio ab alio sit facta, *Obs.* 40. [illegible] *in f.* (hinc differt ab *usufructuario*, [illegible] [illegible] 13. *quib. mod. usufr. amitt.* 25. §. 1. *in f. de usur.*) etiam naturales. [illegible] *de usur.* [illegible] *Fr. Ex.* 4. q. 7. (*Diss. Bach. propter.* §. 35. *I. h. L.* 45. *de usur.*) *vid. Vinn. ad* §. 35. *I. h. num.* 7. 8. *Perez. in C. de R. V. n.* 21.

* Percepti *revocabiliter* [illegible] *acquiruntur* [illegible] à b. f. poss. etiam industriales, *arg.* §. 36. *I. h.* §. 2. *de usuc. Jud.* 4. §. 2. *fin. arg.* 22. *C. de R. V. Fr. Ex.* 4. q. 8. *Vinn.* 1. q. 24. *Hahn. de R. V. num.* 7.

* Consumti *irrevocabiliter* [illegible] §. 2. *I. de off. jud.* §. 35. *I. h. L.* 40. *h.* 4. §. 2. *fin. arg.* licet b. f. possessor inde *locupletior* [illegible] factus, *d. L. Fr. Ex.* 4. q. 9. quod tamen secus est in *heredit. petit.* [illegible] 1. *Cod. de hered. petit.* 25. §. 11. *ff. eod. Fr. d. l.* aut si *dolo sint consumti.* [illegible] 17. §. 1. *de R. V. Perez. in C. de Rei Vind. num.* 29. *plura vid. sup. A. R. V.*

## *Notæ variorum.*

(1) [*Dominium hoc*] Id consideratur vel ex se [illegible] vel *proprium* vel *improprium*. [illegible] [illegible]

[illegible]

[illegible]

[illegible]

(11) [illegible]

(12) [illegible]

(13) [illegible]

[illegible]

[illegible]

[illegible]

(19) [illegible]

(20 [illegible]

(21 [illegible]

(22 [illegible] ] [illegible] Vaſallo [illegible]

(23 [illegible] ] [illegible]

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(35) [illegible]

[illegible]

(37) [illegible]

(38) [illegible]

(39) [illegible]

(40) [illegible]

(41) [illegible]

(42) [illegible]

(43) [illegible]

(44) [illegible]

(45) [illegible] ibid.

(46) [illegible] Quale [illegible] ibid.

(47) [illegible] Quae [illegible] ibid.

(48) [illegible] ibid.

(49) [illegible] ibid.

(50) [illegible] ibid.

(51) [illegible] ibid.

(52) [illegible] ibid.

(53) [illegible]

(54) [illegible] ibid.

(55) [illegible]

[illegible]

[illegible]

[illegible]

[illegible]

(61) [illegible]

(62) [illegible]

(63) [illegible]

(64) [illegible]

(65) [illegible]

(66) [illegible]

(67) [illegible]

(68) [illegible]

(69) [illegible]

(70) [illegible]

(71) [illegible]

(72) [illegible]

(73) [illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

# TITULUS II.

## De acquirenda vel amittenda poſſeſſione.

*Junge L. 7 C. tit. 32.*

D Poſſeſſio [illegible] ſignificat nudam detentionem, non ſuo, ſed alieno nomine, A e g. propter uſum, cuſtodiam, &c. ita poſſident ſervi peculia, & ſibi profe[illegible] [illegible] Depoſitarii, [illegible] Commodatarii, [illegible] Coloni & inquilini [illegible] Ex primo decreto in poſſeſſ. miſſi, [illegible] qui precario in fundo commorantur, [illegible] ( ſecus eſt, ſi precario rem [illegible] ) Procuratores, tutores, &c. qui alienas res [illegible] detinent: [illegible] Hæc poſſeſſio in lata ſignificatione etiam dicitur naturalis. [illegible]

[illegible] Stricte hæc eſt detentio rei, quam quis ſuo nomine, animo & affectione ſibi habendi [illegible] rem detinet; [illegible] mentalis, & per alium: [illegible] rem corporaliter apprehendere [illegible] hoc tamen non requiritur in ſervo fugitivo. [illegible] Facilius aliquid retinetur, quam acquiritur [illegible] Furioſus retinet, quia alium animum non declaravit. [illegible] D

[illegible] quoad [illegible] acquiſito N [illegible] in re [illegible] plurimum facti tamen etiam in ſe continet. [illegible]

[illegible] (1.) ratione Objecti [illegible] proprie dicta, rerum corporalium, [illegible] & Antiqua [illegible] rerum incorporalium [illegible] (2.) ratione qualitatis [illegible] bonæ fidei quando quis credit rem eſſe ſuam, & malæ fidei, quando quis ſcit rem eſſe alienam [illegible] ratione qualitatis [illegible] juſta, [illegible] titulo eſt acquiſita, vel injuſta, quæ titulo injuſto, poteſt poſſeſſio [illegible] (4.) ratione cauſæ impulſivæ tot ſunt ſpecies [illegible] e. g. pro legato, pro [illegible], pro emtore, &c. [illegible] (5.) [illegible] in ſignificatione [illegible] lata, ſignificat nudam detentionem: [illegible] ſtricta, [illegible] eſt, quæ cum corpore ſemel retinetur [illegible] eſt, quæ quis rem citra animum domini, propter aliud jus in re, ſuo nomine poſſidet [illegible] (a) uſufructuarius [illegible] (3) Creditor pignoratitius [illegible] Sequeſter [illegible] Cui precario conceſſa eſt poſſeſſio, [illegible] (6) Vaſallus, [illegible] (7) Emphyteuta [illegible] (8) Superficiarius [illegible]

* Civilis in ſignificatione * lata ſignificat omnem poſſeſſionem, quam Jus civ. agnoſcit, & ex qua oriuntur remedia poſſeſſoria, e. g. Creditor hypothecarius. B C

* Stricta, ratione poſſidendi * modi eſt, quæ ſolo animo retinetur, ſine corporali rei inſiſtentia.

* formæ eſt, qua quis rem detinet tanquam dominus: *1. § 9. de vi & vi arm. 3. §. f. ad exhib. 1. §. 1. pro hered. 13. §. 1. de Publ. in rem 22. § 1. de nox. act.* licet *quis ſciat*, [4] ſe dominum non eſſe: Sic poſſident (α.) dominus, quatenus ſc. rem detinet animo domini, *1. §. 2. uti poſſid.* (β.) qui eſt in conditione *uſucapiendi*, [10] (γ.) qui ex ſecundo decreto in poſſeſſionem miſſus. *15. § 16. & §. 33 pen. l. 44. de damn. infect.* (δ.) violentus poſſeſſor, qui ſcil. eo animo poſſeſſionem invaſit, ut rem animo domini habeat, e. g. emtor, *5. de A. R. D.* Fur. *67. pr. de furt.* ſecus eſt, ſi poſſeſſionem invaſit, ut aliud jus in ea re poſſit exercere, e. g. pignus, uſusfr. &c. cum enim *naturaliter poſſidet.* [20] *v. 6. §. 1. h. 1. §. 28. de vi & vi arm. 1. §. f. 2. uti poſſidet.* (*aliter hoc explicat Hahn. aliter Barb.*) D E

C ACQUIRITUR poſſeſſio * (1.) *APPREHENSIONE*, [11] *3. §. 1.* (etiam *per* aliam perſonam, noſtra voluntate, noſtroque nomine apprehendentem, *1. §. 5. L. 1. §. 20. 42. §. 1. 49. §. f. h. 53. de A. R. D. vid. Struv. Vinn. ad §. 4. I. per quas perſon. n. 1. C. I. A. h.* & *ignoranti.* [12] *13. pr. de A. R. D*) * vera, *3. § 1.* etiam oculis, *1. §. 21.* ſcil. in acquiſitione *derivativa*, [13] non etiam in *originaria.* [14] *v. de accep. ad tit. de A. R. D.* C. F

* analogica, rerum * *incorporalium*: [15] *20. de S. P. U.* e. g. per inductionem in fundum, *3. de uſufr.* uſum & patientiam &c. In juribus negativis poſſeſſio acquiritur *per prohibitionem* [16] e. g. ſi quis prohibeat alium ædificaturum. * Et interdum corporalium, traditarum *per ſignum* [17] Exempla ſunt in *L. 1. C. de donat.* [18] *74. de contrah. empt.* [19] *51. h.* [20] *14. § 1. de peric. & comm. rei vend. c. 2 x. de conſuet. L. 9. § 1. h. 18. §. 2. h. penult. 79. de ſolut. &c. vid. de traditione. ad tit. de A. R. D.* CONSTITUTUM POSSESSORIUM eſt modus analogicæ traditionis, quo verus poſſeſſor ex *juſta cauſa* [21] nomine & jure præſentis & conſentientis, ſe rem in futurum poſſeſſurum *promittit* [22] quod fit vel expreſſè, 18. h. vel implicitè, dum e. gr. venditor ante traditionem rei, eam conducit ab emtore, *45. de R. I. 77. de R. V.* vel ab eo *uſumfructum petit* [23] *28. C. de don. vid. Alciat. Tiraquell. tr. de conſt. poſſ. Cabr. de proceſſ. execut.* ℓ. G E D

e. * (2.) *ANIMO* habendi tacito: *1. §. 3. 3. §. 1. L. 8.* Ex diverſiſſimis cauſis, *3. §. 21.* & poteſt quis eandem rem ex *pluribus cauſis* [24] poſſidere. *3. § 4.* poſſeſſionis cauſam * non mutat *ſolus animus*: [25] *3. §. 19. d. 19. §. 1. h. L. 33. § 1. de uſucap.* * mutat verò *ſolis interveniens*, [26] e. g. poſſeſſor clandeſtinus fieri poteſt violentus. *1. § 21. h. 3. §. 18. L. 10. §. 1.*
H
h.

I Acquirunt, qui non * impediuntur, ut furioſus etiam, cum curatorum conſenſu, *1. § 3* mente captus, &c hoc *ſingulare eſt*, [27] quod infans cum tutoris auctoritate poſſidere poſſit. *1. §. 3. 32. §. 2. 11. 1 de R. J.* ſic *res quandam* [28] donatam etiam abſque tutore acquirat: *3. C. v. Bach.* Pupilli infantia majores etiam *abſque tutore* [29] poſſident, *1. §. 3.* S

i. * prohibentur, qui rei alicujus commercium non habent: Poſſunt duo eandem rem in ſolidum poſſidere, alter naturaliter, *alter civiliter*, [40] &c. *3. uti poſſid. penult. 3. § 5. h. 16. de uſurp. & uſuc.*

*Res in commercio*, [41] *23. § 2. 30. § 1. ignorans* [42] etiam poſſidet rem extra commercium. *1. §. 1. h. 20. de A. R. D. § 4. per quas perſon.* corporales verò, incorporales O

analogicè, modo (1.) ſint certæ, 3. §. 2. *L.* 26. *h.* 32. §. 2. *de uſurpat.* licet pro indiviſo tradantur: 26. (2.) *ſine vitio* [44] ab alia ejus generis poſſeſſione. 3. §. 5. *h.*

B Ex *jure* poſſeſſionis dantur (1.) interdicta: uti poſſidetis, utrubi, de ſuperfic. de aqua quotidiana & æſtiva, de rivis, de fonte, de cloacis; *de quibus infra.* Interdicta *recuperandæ* [44] & *acquirendæ* [45] poſſeſſionis huc non pertinent. (2.) Defenſio *privata,* [46] 29. §. 1. *ad L. Aquil.* 45. §. 1. *eodem.* 1. *C. unde vi. Cu.* 4. 32. *n.* 14. & amiſſa hoc modo etiam recuperari poteſt, modo fiat in momento, h. e. antequam partes ad aliud devenerint. 3. §. 9. *L.* 17. *de vi & vi arm. arg.* 11. §. *f. de teſtam. L.* 197. *de V. O.* idque contra vim etiam armis. *dd. LL.* (3.) Præſumtio pro poſſeſſore, etiam injuſto niſi alius juſtiorem titulum probet: 128. *de R. J.* 2. §. 4. *de publ. in rem* 2. *de condict. ob turp.* 5. *C. de R. V.* neque poſſeſſionis cauſam *regulariter* [47] allegare tenetur. *f. h.* 11. *C. de her. pet. Cu.* 8. 4. 3. *L.* 4. *v.* 73. *de R. V.* 2. *C. de probat.* 4. *C. de edend.* §. 4. *I. de interdict.* 24. *de R. V.* (4.) Poſſeſſio immobilium liberat a *ſatisdatione.* [48] 15. *qui ſatisd. cog.* (5.) Poſſeſſor poteſt reali actione *conveniri* [49] 1. *C. de alien. jud. mut.* (6.) Poſſeſſor ratione rei immobilis nanciſcitur *domicilium.* [50] 5. *C. ubi in rem.*

D *TURBATIO* [51] eſt actus, quo liberæ & quietæ poſſeſſionis exercitium injuria impeditur. idque vel in judicio, vel extra judicium, *verbis* [52] & rebus, *de quibus ad lib.* 43.

D *AMISSIO* eſt, ſi quis rei detentionem amiſerit, h. e. ſi quis deſierit, rem animo ſibi habendi detinere: quod fit (1.) mortuo poſſeſſore, & tum regulariter, neque in heredes *transit.* [53] 1. §. 15. *ſi is, qui teſtam. liber* niſi ille res apprehendat: 23. exceptio tamen eſt in *uſucapionibus.* [54] 14. *de divers. temp. præſcript.* (2.) vivente poſſeſſore, ſi ſc. animo & corpore amittat. 8. Dicitur tamen quandoque amittere (α.) ſolo animo, quando amiſſio incipit ab animo, & corpus manet in poſſeſſione, ſive nuda detentione. (β.) ſolo corpore, cum præter intentionem, facultas rei corporaliter inſiſtendi adempta eſt: quod fit (1.) juſtè, ab hoſtibus, *judice.* [55] &c. 30. §. 2. (2.) injuſtè, per furtum, nam etiam tum adimitur facultas proxima rei inſiſtendi: 15. *h.* idem eſt, ſi commodatarius depoſitarius, &c. rem animo ſibi habendi detinere *incipit.* [56] 67. *pr. de furt.* 47. *h.* per violentam dejectionem: 15. *h.* 1. §. 28. 32. 45. *de vi & vi arm.* per clandeſtinam *occupationem,* [57] 6. 6. §. 1. 7. *h.* (3.) Caſu, e. gr. res interlita, 3. §. 17. perditione: 3. §. 13. *L.* 25. hic enim in caſibus ex jure neceſſitate, etiam ſubitum deponere tenetur. (γ.) animo & corpore ſimul 30. §. 1. Hæ amiſſiones quoad effectum *non differunt.* [58]

## *Notæ variorum.*

De natura poſſeſſionis.

(1) [*Poſſeſſio*] Ut natura poſſeſſionis accurate intelligatur, ac ſimul [illegible] quæ [illegible] eveniunt, quæ [illegible] Videtur (1) præſupponendum, quod illa in exercitio [illegible] [illegible] conſiſtat, ille autem [illegible] vel [illegible] ad definitum objectum referatur, ut ſi quis dominus [illegible] in [illegible] ſe ut dominum gerit, vel ad objectum non adeo determinatum & liquidum pertinens, ut ſi quis [illegible] [illegible] [illegible] [illegible] [illegible] exerceat. Prior ſpecies magis liquida ac intellectu facilior eſt, ab objecto [illegible] [illegible] [illegible] [illegible] [illegible] vera quoque poſſeſſio eſt, [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] Deinde (2) [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] poſſeſſio impropriè ſic dicta, [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] *poſſeſſio propriè dicta,* [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]

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(32) [illegible]

(33) [illegible]

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[illegible]

(53) [*Transit*] Non ipſa poſſeſſio, ſed per apprehenſionem poſſeſſionem ad heredem devolvitur. [illegible] *Brunn.*

(54) [*Usucapiendum*] Hic tamen paratur ipſa poſſeſſio non tranſit. ſed poſtquam ab herede occupata, [illegible] illa occupatio ad momentum mortis & ſic ſtatim continuatur, tenditur uſucapio. Adeo ut quamvis heres per ſex annos adeundam differat, illud ſexennium tamen ad complendam uſucapionem computetur. *Brunn.*

(55) [*Judicio*] Si per ſententiam dicatur poſſeſſio aliena, [illegible] tranſitum in [illegible] dominum. *Brunn.*

(56) [*Semper*] Et repoſitum nihilo. *Brunn.*

(57) [*Occupaverunt*] Quae ſola parata non ſufficit, niſi occupatio vero dominio reſiſtat. *Brunn.* [illegible]

(58) [*Non differunt*] Quia omnibus his caſibus opus habent remedio recuperandae poſſeſſionis. *Brunn.*

# TITULUS III.

## De Uſurpationibus & Uſucapionibus.

*Jung. L. 7. C t. 30. 31. 33. 34. 35. 36. 37. 38. 39. 40. l. 2. t. 26. X de praeſcript.*

D

Olim diſſerebant praeſcriptio & uſucapio *rebus* (1) *tempore* (2) & *effectu*. (3) *L. un. C. de uſuc. transf.* USUCAPIO eſt *adjectio dominii*, (4) per continuationem poſſeſſionis, temporis. *Lege* (5) definiti. 3. h. pr. I. h. (De praeſcriptione actionum: &c. *vid. Lib.* 44. *tit.* 3.) inventa jure gentium. *Grot. lib.* 2. *c.* 4.

C

propter *utilitatem*, (6) 1. pr. h. reformata jure *civili*. (7) §. 2. I. h. Ex poſſeſſione, 25. ſcilicet civili, 11. de O. & A. 13. pr. juſta, quae requirit (1.) juſtum *titulum* (8) pr. I. h. 24. C. de R. V. 4. C. de long. temp. L. un. C. de uſucap. transf. etiam in uſucapione jurium, e. g. *Servitutum*, (9) 24. de R. V. 4. C. de long. temp. praeſcr. L. 5. C. eadem (*Obſ.* 10. pr. ſ. *ſerv. vid. Vinn. ad* §. 4. *I. de ſerv. urb. & ruſt. praed. n.* 4.) nec ſufficit putativus, 27. (niſi juſta ſit erroris *cauſa*, (10) 11. *pro emt.* 2. §. 15. *ibid.*) nec *juris error* (11) 2. §. 15. *pro emtore.* 31. 32. §. 1. *inſ.* (2.) *bonam fidem*, (12) *pr. I. h. 109. de V. S.* (non ſufficit *dubitare* (13) aut error juris, 31. 32. §. 1.) ad minimum tempore traditionis: 15. § 3. 44. §. 2. h. 48. §. 1. de A. R. D. L. un. C. de uſuc. transf. in emtione venditione etiam requiritur tempore contractus: L. 9. h. *pr. emtor* 15. §. 3. *Bach. & Vinn. ad pr. I. h. n.* 2. Jure Canon. & S. h. ſ. *omni tempore* (14) requiritur. *c. fin. x. de praeſcript. Myſ.* 4. O. 6. n. 4. *Gail.* 2. O. 16. n. 6. *Gebbard. de uſuc. n.* 29. & 30.

Uſucapiunt, qui rem civiliter poſſidere poſſunt: (patres fam. & filii fam. 4. §. 1. etiam in *adventitio* (15) peculio: *arg.* 6. § 1 & 9. C. *de bon. quae lib.* de infante, *vid. praeced. tit.* 5. Pupilli etiam abſque tutore inchoant, & continuant poſſeſſionem: 4. §. 2. furioſus *non inchoat* (16) continuat tamen, 1. §. 3. *de A. vel A. P.* 44. §. 6.) etiam per alias perſonas acquiritur ſciend. 47. nam ad uſucapionem requiritur bona fides. Prohibentur acquirere, proſcripti, deportati, banniti, & omnes, qui non ſunt *cives Romani.* (17)

*Omnes res*, (18) corporales & incorporales. 5 *C. de long. temp. praeſcript.* & quidem

* *entia*, (19) (quae uno ſpiritu conſtat, ut homo) ſimul tota acquiritur: O
* conjuncta, (quae pluribus partibus cohaerentibus conſtat, ut domus) non acquiritur per partes, nec tota acquiſita etiam partes *acquiſitae ſunt.* (20)
* Disjunctiva ſive collectiva (quae ex disjunctis partibus uni nomini ſubjectis conſtat, ut populus, grex, in tantum uſucapitur, in quantum *poſſeſſa eſt* (21) 1. §. 3. *de tritic. aliisque praeſc.* 30. §. 2. h.) Modo * (1. reſpectu poſſeſſoris ſit aliena, unde excluditur res

A

B * propria (*Obſ.* 15. (22) §. 4. *pandl.* 44. *de damn. infect.*) poteſt tamen dominus utilis uſucapere dominium directum (23) & directus utile. *dd. LL.*

etiam

[illegible] extra commercium, [illegible] e. g. liber homo, [illegible] C. de long. temp. praeſcr. [illegible] [illegible] [illegible] [illegible] [illegible]

modo [illegible] ſpeciatim non ſit excepta [illegible] qualitatem rei, ut furtiva & vi poſſeſſa, [illegible] quae dolo malo [illegible] alienatae ſunt. [illegible] de partu ancillae [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] licet mala fide alius [illegible] [illegible] [illegible] habere neceſſe. [illegible] cujus quis poſſeſſionem apprehendit, [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] & violentam poſſeſſionem, aut alio, [illegible] poſſeſſore [illegible] C. de [illegible] [illegible] quod ſit, ſi pervenerit in poteſtatem domini [illegible] [illegible] [illegible] creditoris [illegible] Idem eſt, ſi [illegible] [illegible] [illegible] [illegible] [illegible] poſſeſſoris (1.) [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] (2) [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] poterit quadriennio [illegible] C. de [illegible] [illegible] [illegible] [illegible] [illegible] (5) [illegible] (6.) [illegible] [illegible] (7) [illegible] teſtamento [illegible] [illegible] C. de uſuc. pro [illegible] (8.) [illegible] [illegible] [illegible] L. Juliam [illegible] [illegible] Jul. [illegible] [illegible] de A. R. D.

Tertia eſt (1.) POSSESSIONIS CONTINUATIO. [illegible] C. de praeſc. long. temp. [illegible] per aliam perſonam, e. g. ſucceſſorem [illegible] de diverſ. & temp. praeſc. [illegible] ſucceſſor [illegible] apprehendat. [illegible] de A. vel A. P. Singulare eſt [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] de A. vel A. P.

[illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] de div. & temp. praeſc. [illegible] [illegible] pro herede uſucapere [illegible] [illegible] C. de uſucap. & [illegible] de diverſ. & temp. [illegible] Singularis [illegible] [illegible] [illegible] [illegible] [illegible] de diverſ. & temp. [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] de diverſ. & temp. praeſc. [illegible] [illegible] [illegible] de praeſcript. [illegible] temp.

[illegible] 2.) Per TEMPUS legitimum, quod [illegible] eſt, [illegible] [illegible] [illegible] computatur de die in diem. [illegible] de diverſ. & temp. praeſc. [illegible] [illegible] [illegible]

[illegible]

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dem provincia domicilium habent, *l. C. de long. temp. praeſcr.* ) X. inter abſentes XX. annos [illegible] *pr. I. L. un. C. de uſuc. transform.*

Effectus eſt dominii acquiſitio, *un. C. de poſſ. [illegible] pr. C. de [illegible] ann. praeſcr.*

F *Impediunt cauſae, propter quas prior dominus rem ſuam vindicare prohibetur jure: (ſi e. g. pater filii rem poſſidet, nam praeſcriptio non currit contra eum, qui non poteſt agere) [illegible] non enim quivis facto prohibetur [illegible] *C. de ann. except.* [illegible] *de praeſcr.* [illegible] impedit. *Carpzov.* [illegible]

G *Reſcindunt *inchoatam USURPATIO quae eſt coeptae & nondum perfectae uſucapionis interruptio [illegible] *Naturalis ſive actualis poſſeſſionis interruptio, quae

H fit facto naturae, *alluvione*, [illegible] &c. [illegible] *de A. vel A. P.* vel hominum uſucapientis, e. gr. morte *illorum* [illegible] *de A. vel A. P.* vel tertii, ut ſi res mobilis furto ſit ablata, [illegible] ſicut res ſit *vi poſſeſſa*, [illegible] *pr. inſt.*

I *civilis* quae fit per litem poſſeſſori de re uſucapienda motam, [illegible] *C. de A. vel A. P.* & ſufficit hic ſola citatio, [illegible] aut denunciatio extrajudicialis officio facta; [illegible] per quod correctum jus antiquum. [illegible] *de R. V.* [illegible] *pr. inſt.* vide *L.* [illegible] *C. de long. temp. praeſcr.* Haec *poſſeſſore condemnato, omnino rumpit poſſeſſionem; abſoluto

K eidem [illegible] *Barb.* [illegible] *adverſario actionem remittente: ipſa quidem longi temporis praeſcriptio interrumpitur, alia vero ad XL. annos [illegible] uſque

L durat. [illegible] *C.* [illegible] Si tamen quis extremitates poſſeſſionis probaverit, adverſarius interruptionem *probare debet* [illegible]

*perfectam, reſtitutio in integrum, *de quo ad tit. ex quib. cauſ. maj.*

M Praeſcriptio longiſſimi temporis eſt vel annorum *XXX quae eſt acquiſitio rei D per poſſeſſionis continuationem XXX annorum. [illegible] *C. de praeſcr.* [illegible] introducta à *Juſtiniano*, [illegible] ex poſſeſſione, [illegible] juſta, etiam ſine titulo, modo adſit b. f. [illegible] Sic acquiruntur (1) res ſine titulo poſſeſſae, [illegible] (2) [illegible] *C. quib. non obj. long. temp. praeſcr.* [illegible] (3) Res adventitiae filiorum fam. à patre alienatae. [illegible] currit hic tempus ex eo, quo filiusfam. *ſui juris* [illegible] factus eſt. [illegible] (4) res à m. f. poſſeſſore, ignorante domino, alienatae, & b. f. acceptae; [illegible] *C. de long. temp. praeſcr.* (5) res [illegible] à b. f. poſſeſſore. [illegible] *C. de* [illegible] *ann. praeſcr.* [illegible] (6) Feudum, [illegible] quo per.

N acquiritur dominium. [illegible] *XL. quae eſt acquiſitio rei per D poſſeſſionis continuationem XL. annorum. Acquiruntur hac (1) [illegible] Principis; *l. C. de fund. patrim.* (2) ſeculares; [illegible] *ann. praeſcr.* (3) [illegible] Eccleſiaſticae, [illegible] *C. de SS. Eccleſ.* [illegible] *de praeſcr.* & (4) piorum locorum, [illegible] (5.) *Civitatum* [illegible] *Barb.*

O [illegible] *C. annorum, quae eſt acquiſitio rei per poſſeſſionis continuationem 100. annorum. Acquiruntur hac res Romanae Eccleſiae: Noviſſ. ſc. Jure Can. [illegible] *de praeſcr.* ſecus de Jur. Can. [illegible] & J. Civ. *Barb.* [illegible] (*Diſſ.* [illegible] *quae* [illegible] *C. de SS. Eccleſ.* [illegible])

P *immemorialis* [illegible] eſt; cujus in D contrarium non extat memoria: [illegible] quod interdum etiam [illegible] quam 100. annis fieri ſolet: Hac praeſcribuntur res, actiones, quae aliter praeſcribi non *poſſunt* [illegible] *Gabr.* [illegible] *de uſuc.* [illegible]

Nota

## Notæ variorum.

[illegible]

[illegible]

(11) [illegible]

(12) [illegible]

(13) [illegible]

(14) [illegible]

(15) [illegible]

(16) [illegible]

17 [illegible]

(18) [illegible]

(19) [illegible]

[illegible] Corpus Pontificium [illegible]

(20) [illegible]

(21) [illegible]

(22) [illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

(35) [illegible]

(36) [illegible]

(37) [illegible]

(38) [illegible]

(39) [illegible]

(40) [illegible]

(41) [illegible]

(42) [illegible] Verius [illegible]

(43) [illegible]

(44) [illegible]

(45) [illegible]

(46) [illegible]

[illegible]

(47 [illegible]

(48 [illegible]

(49 [illegible]

(50 [illegible]

(51 [illegible]

(52 [illegible]

(53 [illegible]

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(56 [illegible]

(57 [illegible]

[illegible]

( [illegible] [ [illegible] ] [illegible]

( [illegible] ) [ [illegible] ] [illegible] Quod [illegible]

( [illegible] ) [ [illegible] ] [illegible]

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( [illegible] ) [ [illegible] ] [illegible]

( [illegible] ) [ [illegible] ] [illegible]

[illegible]

[illegible]

TTT.

# *TITULUS IV.*
## Pro ſoluto.

S*ive ex vero, ſive ex putativo* [1] debito res ſoluta ſit, poteſt uſucapi, modo tradens & accipiens crediderint debitum ſubeſſe. *3. h.*

### *Notæ variorum.*

[*Ad Rubric.*] Quicquid in ſolutum datur: was an ſtatt der Schulden angegeben wird / cenſetur venditum *l. 24. de Pignor. act.* ut itaque titulus hic conveniat cum ſequenti. Incipit *hic Titulus à l. 46. tit. præced. Stryk.* Ex hoc titulo res aliena ex debito b. f. ſoluta, aut in ſolutum data (cum alia res deberetur) & accepta, uſucapitur, *l. 46. ff. de uſucap. Mencken.*

(1) [*Sive ex vero ſive putativo*] Quemadmodum Titulus in præſcriptione conſtitutiva & privativa non requiritur, ſed tantum ad translativam pertinet, ubi res aliena mediante Tertio, in alium transfertur, ita ne quidem in hac ſemper eſt neceſſarius. Interim *JCTI* de tituli neceſſitate ſemel perſuaſi, in caſibus, ubi titulus non adeſt, tamen titulum finxerunt. Eo etiam ſpectat, *Titulus pro ſoluto.* Nam hic perinde non eſt, ac Titulus pro *tradito*, ſolutio quippe & traditio, Titulus non ſunt, ſed aliquem præſupponunt, eumque conſummant, ſed id, quod ille exigebat, præſtant. *Titius.*

# *TITULUS V.*
## Pro emtore.

E mptio ſub conditione † ſuſpenſiva ante conditionis exiſtentiam hic non eſt titulus: *2. §. 2. h.* † *reſolutiva eſt titulus.* [1] *4. §. 3. d. in diem addict. 2. §. 3. h.*

### *Notæ variorum.*

(1) [*Reſolutiva eſt Titulus*] Quia hic contractus perfectus & dominium translatum, ſi ſc. à vero domino vendita, licet revocabiliter. Quamdiu itaque conditio reſolutiva non exſtat, tam diu uſucapere pergit. *Stryk.* Ex Titulo pro Emtore, is, qui purè emit, aut juſto errore ſe emiſſe putat, *l. 2. §. 2. l. 11. h.* aut litis æſtimationem ſolvit. *l. 13. ff. h.* rem alienam *b. f.* acceptam, licet ab eo, qui pecuniam erat perditurus, *l. 8. ff. h.* uſucapit, *l. 2. pr. l. 6. §. 1. ff. h.* ubi *titulo emtionis eſt titulus transactionis*, ex quo rem tranſactionis cauſa b. f. acceptam uſucapere licet, *l. 29. de uſucap. l. 8. C. de uſucap. pro emt. & tranſact. Mencken.*

# *TITULUS VI.*
*Cod. VII. Tit. 29.*
## Pro Herede.

H*ic pro herede* [1] poſſidet, quando verus heres poſſidet rem *non hereditariam:* [2] *v. Vinn. ad §. 7. h. 3. h.* alias *in tit. de hered. petitione*, pro herede poſſidet, qui non eſt heres, & heredem ſe eſſe dicit: ſic etiam uſucapiunt ſui heredes: *Obſ. 2.* [3] *C. h.*

### *Notæ variorum.*

(1) [*Hic pro herede*] Ex *hoc tit.* verus heres *l. 1. ff. l. 3. C. h.* (ſive ſuus, ſive extraneus *arg. l. 32. ff. ad L. Aquil. Struv. h. Ex. 43. th. 32.*) Vel bonorum poſſeſſor, *l. 11. ff. de her. petit.* rem alienam hereditariam, quam defuncti fuiſſe putat, uſucapit, *l. 3. ff. h.* Hic *Titulus prodeſt ad excludendum Tertium, non vero dominum* (ut deponentem) *quem 30. annorum lapſus demum removet, l. 5. C. h. Schilt. ff. Ex. 45. §. 64.* Alienus ab ea uſucapione eſt titulus ejus qui heres non eſt, ſed

pro herede poſſidet, e. g. extraneo ſuo herede exiſtente *l. 2. C. h.* item illum qui pro poſſeſſore tanquam prædo poſſidet, nam eſt in mala fide. *l. 11. §. 1. l. 12. 13. de hered. petit. Menckon.*

(2) [*Non hereditariam.*] Neceſſum tamen eſt, ut illa res penes defunctum juſto titulo fuerit: Heres enim non habet novum jus, ſed tantum continuatum. *Bergk.* Poterit hæc, *Tituli pro Herede,* explicatio omnino admitti, qui enim ſuccedit, res velut ex donatione accipit, quæ ad uſucapionem ſufficit, & ſi ex legato rei alienæ uſucapio ſequitur, cur non etiam ex ſucceſſione in rem alienam! Interim non idem hic omnes ſenſerunt, nam ex *l. pen. pro herede,* liquet, hanc contrariam ſententiam etiam in *l. fin. C. eod.* occurrere videtur, *add. Thomaſ. in not. ad Huberum poſit. ad ff. h. t.* Non improbabilis quoque eſt illa explicatio, qua *Titulus pro herede* eſſe exiſtimatur, quando heres rem, quam defunctus mala fide poſſidebat, propter bona fide ex ſua perſona uſucapit cujus *Autor tit. de Uſucap. lit. fr.* fecit mentionem; licet etiam nonnulli, & in ſpecie *Dn. Berger in reſol. ad d. t. q. 5.* illam uſucapionem noluit admittere, nominatim *tertius,* quibus utuntur, nihil aliud evincunt, quam quod heres ex perſona defuncti uſucapere, ejusque acceſſione uti nequeat. Et cum nonnulli ex diſſentientibus concedant, rem defuncti, v. gr. commodatam ab herede poſſe uſucapi, ex *l. pen. pro hered.* non videntur ſanè negare poſſe, quia eandem ſortem ſubire queat res à defuncto mala fide poſſeſſa, illam enim hic non poterit uſucapere ob defectum tituli, hanc, ob malam fidem, ſi verò illam uſucapere poteſt heres, cur non & hanc! Denique non abſurdum videtur, ſi Titulum pro herede, hic eodem modo accipiamus, ſicut ille accipitur circa hereditatis petitionem, ut uſucapio pro herede ſit, quando non heres contra verum heredem hereditatem præſcribit, nec obeſt, quod hereditas 30. *annis* præſcribatur *l. 7. C. de hered. petit.* Hic autem de uſucapione ſermo eſt, nam ille terminus fortè olim non obtinuit, ſed recentiorum inſtituto ac ideo tandem aſſumtus videtur, quod hereditatis petitio, actio mixta ſit. *Thom.*

(3) [*Obſ. 2.*] In *hac L.* non negatur ſuum uſucapere poſſe, ſed ſi ſuus adſit, tunc non poſſe extraneum titulum pro herede allegare, *Conf. h. t. num. 2. Bergk.* Ad Obſ. *l. 2. C. h. t. ibi nihil pro herede poſſe uſucapi.* Ei Loqui non de ſuo, ſed de extraneo herede. Sententia enim *d. l.* eſt: eum, à quo ſuus heres petere poteſt hereditatem uſucapere non poſſe pro herede, *ibi ſuis exiſtentibus;* Ratio eſt, quia ſui heredes non fiunt, ſed exiſtunt heredes, nec acquirere bona dicuntur, ſed retinere, ideoque ſuorum conditio talis eſt, ut rectè paterna bona obtinuiſſe videantur: Et quæ bona, quaſi viventis hæc pro herede uſucapi non poſſunt. *Conf. l. 5. §. 1. unde legit. l. 2. C. unde lib. Berger.*

# TITULUS VII.

## Cod. VII. Tit. 27.

## Pro donato.

Hic requiritur (1.) ut revera donatio intervenerit. (2.) inter perſonas, quæ validè donant. *vid. ſupr. ad tit. de donat.*

### *Notæ variorum.*

(*Ad Rubric.*) Quicquid traditum ab eo, qui donare poterat, ſi alienum fuerit, uſucapitur pro donato, *l. 2. h. t. Bergk.* Titulus *pro Donato* competit ei, qui rem alienam à non Domino donatam & traditam poſſidet, *l. 1. h.* nec valet uſucapio, ſi donatio à Domino facta ſit. Uſucapiendi tempus adverſus tertium hoc caſu currit, licet donator revocandi animo litem moverit, *l. 2. ff. h.* dummodo hodie perſeveret poſſeſſoris bona fides. *Menckon.*

# TITULUS VIII.

## Pro derelicto.

Hic requiritur abjectio *pro derelicto* (1) *à non domino* (1) facta. 4. 6.

*Notæ*

### *Notæ variorum.*

(1) [*Pro derelicto*] Titulus pro derelicto eſt, quo quis rem alienam verè pro derelicto habitam ex cauſa derelicti verè uſucapit, *l. 1. h. Mencken.*

(2) [*A non domino*] Nam ſi verus dominus abjiceret, mox cedit occupanti ſine uſucapione. *Stryk.*

# *TITVLVS IX.*

## Pro legato.

Hic *legatum* (1) eſt à non domino relictum.

(*Ad Rubric.*) Ex hoc tit. verus legatarius, *l. 2. ff. h. l. f. ff. h. l. 7. ff. h.* qui ex ultima voluntate capere poteſt, poſſeſſionem rei legatæ alienæ legitimè & bona fide nactus, *l. 6. l. 8. ff. h.* eandem uſucapit, *l. 1. ff. h. Mencken.*

(1) [*Legatum*] Titulus pro legato competit ei, qui rem alienam verè legatam uſucapit, modo teſtamenti factionem habeat, *l. 1. 2. 3. 4. h. t.*

# *TITVLVS X.*

## Pro dote.

Incipit uſucapio *pro dote* (1) ſecuto matrimonio; ſive res data ſit inæſtimata, ſive æſtimata, modo ita detur, ut ſecuto matrimonio accipientis fiat: nam ſi detur inæſtimata, ut ſtatim accipientis fiat, tum non uſucapitur pro dote, *ſed pro ſuo* (2)

### *Notæ variorum.*

(1) [*Pro Dote*] Hoc certum eſt, ſi uxor ante nuptias rem juſto titulo & bona fide acceperit, illamque in dotem dederit, poſſe maritum cœptam ab uxore uſucapionem continuare, *l. 1. §. 2. l. 2. ff. h. Stryk.*

(2) [*Sed pro ſuo*] Imò & *pro emtore*, cum æſtimatio faciat venditionem, *l. 10. ff. de jur. dot. Stryk.*

# *TITULUS XI.*

## Pro ſuo.

Hic (1.) eſt generalis, concurrens cum omni alio titulo. *27. de uſucap.* (2.) eſt *ſpecialis* (1) ſi quis rem acceperit illis modis, quibus inter titulum & modum *diſtingui non poteſt*; (2) e. g. occupatione, &c. item traditione rei ex falſa cauſa. *l. 2. §. f.* Currit enim uſucapio ex contractu innominato, *tranſactione &c.* (3)

### *Notæ variorum.*

(*Ad Rubric.*) Titulus pro Suo eſt *Generalis*, competens ex omnibus cauſis per quas dominium directò acquiritur.

(1) [*Specialis*] Quo res aliena bona fide accepta, vel ſine titulo ſpeciali, à modo acquirendi diverſo, ut uſucapione rei alienæ tanquam nullius, *l. 2. ff. h.* aut ſine titulo ſpecialiter probato, *arg. l. 1. §. 2. ff. pro dot.* vel ex falſa cauſa (e. gr. cum errore facili res emta eſſe creditur, quæ emta non eſt, *l. f. §. 1. ff. h.*) uſucapitur. *Mencken.* Titulus pro Suo *Specialis*, videtur ſaltem titulus putativus eſt, perinde ac Titulus pro *Soluto*. Nam ſive res ex falſa cauſa tradatur, ſive tanquam nullius occupetur, neutro caſu titulus occurrit, ſed ſaltem fingitur. De cætero ultimum exemplum à Titulo pro derelicto, in eo differre videtur, quod hic

 pri-

præſupponat amiſſionem domini voluntariam, illud verò involuntariam, *Titius*

(2) [*Diſtingui non poteſt*] Contingit hoc in acquiſitione *Originaria*, quando rem, quæ antea nullius fuerit, meam facio: Imò, ſi res antea nullius fuerit, non opus habeo uſucapione, ſed cedit mox occupanti. Sed ſi quis rem acquirat, e. gr. ſuccinum in littore maris invenerit, & alter rem ex mari ejectam putans, illam invenerit, & triennio poſſideat, jam uſucapione ſecurus erit. Nam in *derivativa* acquiſitione, ubi rem ab altero acquiro, *Titulus* ſeu contractus, & *modus* acquirendi ſeu traditio differunt. Ex nullo ergo contractu quis fit dominus, niſi accedat traditio. *L. traditionibus* 20. *C. de pact. Struv.*

(3) [*Translatione &c.*] Ex quocunque negotio alias dominium transferri poteſt, ex eodem etiam naſcitur uſucapiendi titulus. *Struv.* In ſpecie vero acquiritur poſſeſſio ei, qui putat ſe rem poſſidere, ut ſuam ac propriam, cum tamen ſit aliena, v. gr. quæ cœlo, terra, mari, aut ex hoſtibus capiuntur, *l. 2. ff. h. Menoch.*

# LIBER XLII.

## TITULUS I.

## De re judic. & effect. ſent. & interlocutionibus.

*Junge l. 7 C t. 52. 43. 44. 45 & ſeqq.*

D Sententia eſt pronunciatio à Judice ritè & legitimè facta, cauſæ controverſæ A
† deciſionem continens. Deciditur definitiva res principalis, interlocutoria cauſa incidens: *39. de minor.* hæc eſt * ſimplex, quæ conſiſtit in terminis articuli, ſuper quo lata eſt, nec tangit cauſam principalem v. g. in puncto legitimationis: * *mixta*, (1) quæ extra terminos articuli a.
progreditur, & cauſæ principali facit præjudicium, e. g. ſi judex deferat juramentum ſuppletorium, vel purgatorium, *vid. Cr. 3. Reſp. 48. n. 10.* item, ſi judex fidejuſſori convento concedit beneficium *excuſſionis*, (2) *vid. Marant. in ſpec. part. 6. n. 43. & ſeqq. Myſ. 3. O. 88. Gail. 1. O. 130. n. 6.*

C Eam profert Judex competens, *ſ. de Juriſd.* 1. (non etiam *arbiter*, (3) *13. §. 5. de his, qui not. infam.*) *vid. Cr. 1. c. 26. d. 12.* J. civ. ipſemet, *2. 3. C. de ſent. ex peric. recit. ut tamen d. L. 2.* Hodie etiam per Actuarium: *ſi plures* (4) ſint judices, requiritur tempore ſententiæ omnium præſentia: *37. 39.* poteſt tamen aliquis præſens non decernere, *modo juret, ſibi de cauſa* (5) non liquere. 36. *Si paria ſint* (6) vota Judicum * ordinariorum, præfertur ea, quæ eſt pro reo, & minorem continet ſummam, 38. niſi B
actoris cauſa ſit favorabilis, e. g. teſtamentum, dos, *38. h. c. ſ. h. Cr. 1. c. 27. d. 5.* * delegatorum, præfertur ea, quam delegans confirmat: *21. c. ſ. 2. h.* (*Ob l. 38.* (7) *h.*) b.
rectius tamen ratio, *quam numerus* (8) conſideratur, *Cr. 1. c. 27. d. 10.*

S. Inter litigantes: nam tertio non præjudicat: 63. In procuratorem poſt litem conteſtatam ferri, jure civ. neceſſario debebat, *1. C. de ſent. & interlocut.* In Camera non poteſt, niſi in cauſa injuriarum: hoc *alibi* (9) in judicis arbitrio eſt. J. W. *p. 1. tit. 55.* §. Ob auch jemand.

O Sententia debet eſſe conformis libello, *quoad objectum*, (10) & cauſam petendi: *18. comm. div. ſ. C. de fideic. lib. 30. in f. d. poſt. dot. Cr. 1. c. 26. d. 8.* deducta autem in judicium etiam ea ſunt, quæ per conſequens eo deducta ſunt: *Vale. lib. 3 c. 11. n. 21. & 37.* ut fructus, *31 de R. C. 2. de uſur.* (ſc. tempore accepti Judicii, & poſtea pendentes, non etiam *ante percepti* (11) *25. §. 8. de Ædil. Edict. obſ. 24.* (12) *de judic.*) *expenſæ*, (13) *13. §. 6. C. de judic.* Hodie in *arbitrio Judicis* (14) hoc eſt. Re-

C Requiritur ad ſententiam *(1) ut fiat ritè, [illegible] *C de ſent. & interlocut.* ſc. ratio- b.
D ne * præcedentium, poſt citationem. [illegible] *de re judic.* cauſæ cognitionem, *[illegible] C. de ſent. & interlocut.* [illegible] *C. de ſent. ex peric. recit.* [illegible] Litis conteſtationem, ſc. in cauſa ordinaria *[illegible] de lit. conteſt.* [illegible] in cauſa ſummaria vero litis conteſtatio neceſſaria *non eſt*, [illegible] *Clem. ſæpe de V. S.* [illegible]

d. * Concomitantium, ut proferatur (1) judice *non ſtante*, [illegible] *de ſent. & re jud.* [illegible] (2.) ex ſcriptura, eaque publicetur [illegible] *C. de ſent. ex peric.* [illegible] (3.) *coram* * partibus, & quorum intereſt. [illegible] (4.) *in loco publico* [illegible] *C. de ſent. & interloc.* (5) juſto tempore, non die feriato, [illegible] *C. quomodo & quando judex* [illegible] *N.* [illegible] *de O.* [illegible] (in Eccleſiaſticis inter Catholicos lin-
e. *gua Latina*) * (2.) ut ſit juſte ſecundum jus in theſi: (nam alias ipſo jure eſt nulla: [illegible] *quæ ſent. ſine appel.* [illegible] *C. quando provoc. non eſt neceſſe*, e. g. ſi teſtamentum impuberis *juſtum* dicat) partis & *in hypotheſi*, [illegible] (e. g. ſi impuberem dicat puberem: hæc appellatione reſcindenda, *dd. LL.*)

e. * (3.) Contineat cauſæ deciſionem. [illegible] & debet eſſe certa, [illegible] *C. de ſent. quæ ſine cert. quant.* * per ſe, ſc. ex cujus verbis conſtat, quid, quale, quantum debeatur, [illegible] *de V. O.* * per relationem, e. g. ad teſtamentum, inſtrumentum [illegible] libellum, [illegible] *de Recept.* [illegible] *C. de ſent. quæ pro certa quant.* De ſententia conditionali, e. gr. *ſi juraverit* [illegible] Incerta tamen ſubſiſtit, ſi natura negotii certam *non permittat* [illegible]

Sententia lata *non* [illegible], [illegible] *de condict. indeb.* eam tamen definitivam Judex non poteſt *retractare* [illegible] Interlocutoriam *retractare* [illegible] poteſt, [illegible] (nec ab ea [illegible] appellatur) non tamen temerè [illegible] *C. de modo mulct.* plura habet *Bach.* [illegible] Poſt X. dies fit *RES JUDICATA*, quæ *pro veritate* [illegible] habetur, [illegible] *de ſtat. hom.* [illegible] *non reſcinde poteſt*, [illegible] licet nova Inſtrumenta ſint reperta: [illegible] *NISI* (1) ſententia lata contra utilitatem publicam, [illegible] *C. de jure reipubl.* (2.) inſtrumenta reperta probent antea ſententiam latam eſſe, [illegible] *C. quando provoc. non eſt neceſſ.* (3) ex probationibus privilegiatis [illegible] *ſive* [illegible] *ſuppletorio* [illegible] ſententia lata: [illegible] *de perjur.* (4.) Inſtrumenta antea ab adverſario dolo malo fuerint occultata. [illegible] *C. de transact.* [illegible]
D *de admin. tut.* Sententia non reſciſſa datur exceptio vel *actio rei judicatæ* [illegible] quæ eſt perſonalis, competens actori, adverſus condemnatum, ejusque ſucceſſorem, etiam *particularem*, [illegible] *de pignorat.* ad præſtandum id, ad quod condemnatus eſt: Oritur ex *quaſi contractu*, [illegible] *de peculi.* [illegible] eſt perpetua. [illegible] etiam ad uſuras [illegible] *C. de* [illegible] *Bach.* [illegible] *C. de uſur. rei jud.* [illegible] [illegible] petitur implorationc officii judicis. *Gail.* [illegible]
D Contra ſententiam datur Appellatio, *Reviſio*, [illegible] *de quib. ad lib.* [illegible]

## *Notæ variorum.*

[illegible] (1) [illegible] [illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

(29) [illegible]

(30) [illegible]

(31) [illegible]

(32) [illegible]

(33) [illegible]

(34) [illegible]

(35) [illegible]

(36) [illegible]

(37) [illegible]

# TITULUS II.

## De Confeſsis.

*Junge L. 7. C. tit. 59. l. 2, t. 18. X. h.*

D **C**onfeſſio (1) eſt qualiscunque contra ſe facta pronunciatio: (reſpectu cujus eſt teſtificatio tantum. *de qua vid. tit. de probat.*)

f Vera, verbis vel literis declaratur: *Ficta* (2) ex facto elicitur: *4. §. f. & ſeq. de his, qui not. infam. 5. 6. d. 1. 11. §. 4. & 7. de interrog.* fuga quidem facit *locum torturæ*, (3) *Ca. q. 20. num. 41.* non tamen confeſſum *Diſ. Weſemb.*

E * Civilis judicialis, quæ fit *in * jure*, (4) habetur pro ſententia, & confeſſus *pro judicato.* (5) *1. §. f. h. 21. de judic. Diſ. Ca. 2. c. 3. d. 3. n. 10.* modo (1) perſona ſit *habilis*, (6) *arg. 4. §. 5.* qualis eſt etiam pupillus infantia major, cum tutoris auctoritate. *6. §. 5.* minor cum curatoris conſenſu, *arg. L. 14. d. re jud. 2. C. qui legit. perſ. ſtand. in jud.* (licet tamen in integrum reſtituuntur) ſine curatore hic nihil agit. *3. C. de in integr. reſt.* curatorem non habens, validè confitetur, modo cauſa talis ſit, ut poſſit in judicio *ſtare* (7) læſus tamen etiam reſtituitur, (2.) Confeſſio facta *præſente adverſario* (8) *6. §. 3.* (3.) Coram competente judice: (4.) certum aliquid confeſſus ſit, *6. pr.* (5.) ſponte, abſque errore: *7. C. de jur. & fact. ign.* facti ſc. alieni; nam obligatur, qui confitetur ex *errore juris*, (9) *2. h.* (niſi agatur de rebus propriis *amittendis.* (10) *8. de jur. & fact. ign.*) & facti proprii; *arg. f. 10 f. pro ſuo.* hæc tamen *aliquando* (11) toleratur. A B C

* judicio, habet *vim probationis.* (12) *79. de judic.* his comparantur hodie confeſſa poſt litem conteſtatam.

b * *Extrajudicialis* (13) quæ fit inter privatos, extra jus & judicium, & hæc plena eſt probatio, modo fiat adverſario præſente acceptante, *Ca. 2. c. 18. d. 21.* aut alias plenè probari poſſit, e. g. ſcriptura, *26. §. fin. depoſ.* vel teſtibus: *l. 13. C. de non num. pecun. N. 90 c. 2. arg. 15. C. de fid. inſtr.* & *cauſa debendi* (14) exprimatur. *25. §. f. de probat. c. 14. X. de fid. inſtr.* 6.

a Criminalis * judicialis plenè probat, modo *ſit libera:* (15) De extorta *per torturam*, (16) *vid. C. q. 120.* & ſi de *corpore delicti* (17) * conſtat, poteſt ad ultimum ſupplicium

D pervenire: *5. de cuſtod. reorum. 1. §. 14. ad SCt. Silan. 1. §. f. de quæſtion. Ca. q. 16. 20.* in

E delicti facti tranſeuntis, e. g. adulterio &c. ſufficiunt *indicia* (18) *Carpz. q. 105. num. 39.*

c * non conſtat, ultra relegationem aut fuſtigationem procedi non poteſt. *Carpz. q. 105. num. 20.*

d * *extrajudicialis* (19) facit indicium ad torturam. *Carpz. q. 120 n. 42. &c.*

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### *Notæ variorum.*

(1) [*Confeſſio*] Si quis de ſe ipſo confiteatur, [illegible]

(2) [*Ficta*] Quæ à jure fingitur *l. 5. ff. de his qui not. inf. L. 40. § 1. ff. de Poſt.* [illegible] *c. 2. de confeſſ. in 6. Carpz. l. 6. tit. 103.* [illegible]

(3) [*Locum torturæ*] [illegible]

*Diſtinguendum inter fugam ante, vel poſt [illegible]*



[illegible]

[illegible] Ergo.

(4) [In jure] N. 4. Apud Praetorem, [illegible] Quod si post [illegible]

(5) [Pro judicato] [illegible] Ergo.

(6) [Habeto] [illegible] Ergo.

(7) [Dare] [illegible] Ergo. [illegible]

[illegible]

(8) Praefecto [illegible]

(9) [illegible] partem [illegible]

(10) [illegible] Ergo.

(11) [Aliquando] [illegible] Ergo.

(12) [Pro judicatum] [illegible]

[illegible]

[illegible] non eſt locus pœnæ capitali. Argu.
(19.) [*Extra judicialis*] Huc etiam pertinent Glossatores illæ de commiſſo delicto. Wann ſich Jemand der That berühmet *vid. Conſtit. Crim. art.* 32 *Argu.* *Ficta* confeſſio ex contumacia contumacia provenit, ut ſi documentum in contumaciam pro recognito habetur, vel in Saxonia lis pro affirmata et conteſtata accipitur, unde formula dicendi apud Saxones: das Beklagter *ſub pœna confeſſi & convicti* ſich auf die erhobene Klage einzulaſſen und zu antworten ſchuldig. *Vera* vel ex verbis aliorum, vel ex liquidis factis provenit. Quoad *cauſas quidem civiles* inter utramque confeſſionem non deprehenditur differentia, ſed tantum inter eam, quæ *ficta*, quam quæ vere confeſſa eſt, decernitur. Adeſt tamen uſus hujus diſtinctionis quo ad *cauſas criminales*, quippe in quibus condemnatio quidem *ex confeſſione vera* fieri poteſt, modo de corpore delicti conſtet, *u. l. 1. §. f. ff. de quæſtion.* nunquam autem *ex ficta*, quippe quæ non eſt luce meridiana clarior, qualis in criminalibus requiritur *Ludov. d.* 3.

# TITULUS III.

## De ceſſione bonorum.

### *Junge l. 7. C. tit. 71.*

Ceſſio[1] hic eſt actus, quo debitor ære alieno ſine dolo malo obæratus, omnia ſua bona creditori ſponte relinquit, ut ipſi exinde, quantum fieri poſſit, ſatisfiat, ipſeque à carcere liberetur. *1. C. h.* D

Hoc flebile beneficium, *7. 8. C.* à Julio Cæſare introductum, *vid. Gell.* 20. *c.* 1. Competit *ex voluntate*[2] debitoris, utcunque declarata: *v. 6. C.* Hodie per nuntium, Epiſtolam, vel procuratorem fieri poſſe *negant.*[3] *Conſ. Wiſſenb. h.* C

Cedere poteſt debitor, *1. h. v. Bach. V. 1. D. 24. th. 4. ꝑ. dummodo* maſculus & fœmina. *7. C. v. N. 134. c. 9. Aut. hodie. C. de cuſtod. reorum,* etiam *Eccleſia,*[4] *Bach. V. 2. D. 24. th. 4. C.* filiusfamil. *1. C.* modo ſit ſine fraude obæratus *37. de minor. 9. de jur. dot. f. de in jus voc. 7. §. 3. de juriſd. 1. §. f. de pœn. obſ. f.*[5] *§. 4. C. de cuſtod. reorum.* Creditori, etiam *invito.*[6] *11. de O. & A.* S

*Omnia*[7] bona. *Cc. in Aſylo debit. c. 1. §. 43.* etiam commoditatem ex uſufructu, Emphyteuſi, feudo, ad dies vitæ debitoris: *arg. 8. §. f. de peric. & comm. rei vend.* nec jure ſtricto obolus relinquendus; *arg. 6. h.* (*Diſſ. Trawl.*[8] *h. propter 6. h.*) ex æquitate tamen veſtis *quotidiana*[9] relinquenda eſt, & quibusdam in locis, das Handwerckszeug.[10] *v. Tholoſan.* P. O.

*Forma*[11] eſt, ut in D. quidam etiam de Jur. Can. requirunt cautionem, (juratoriam ſive promiſſoriam) de reliquis debitis tandem ſolvendis, ſi ad meliorem fortunam devenerit cedens. *c. Odoardus 3. x. de ſolut.* fr.

B Facta ceſſione, (cui renunciari *valide non poteſt,*[12] *71. §. 2. de condit. & demonſtr. Peren. h. num. 20. 21. v. 5. C. de pact.*) * debitor quidem ſemper manet obligatus, ratione reliqui, in caſum pinguioris fortunæ. *3. C. de bon. Aut. jud. poſſ. §. f. I. de act.* non poteſt tamen incarcerari, *1. C.* & in bonis poſtea acquiſitis habet beneficium competentiæ, *4. h. §. f. I. de act.* ſcil. *quoad priores*[13] creditores, *d. L. 3. C.* Fidejuſſores nihil juvantur; *per §. f. I. de Replic. obſ. 43*[14] *de ſolut.* ſolvitur ſocietas: *§. 7. I. de ſoc. 65. §. 1. pro ſoc.* Cedens infamia *non notatur:*[15] *11. C. ex quib. cauſ. infam. arg. 1. C. unde v. inf. C. h.* hodie tamen quibusdam in locis actum ignominioſum *facere debet.*[16] *Peren. h. n.* 22. A

* Creditores petunt miſſionem à judice, & curator bonorum conſtituitur, qui bona adminiſtrat, vendit, ac creditoribus exinde ſolvit: Non autem propria auctoritate bona poſſunt occupare, *4. C.* a.

Con-

Ceſſionem reſolvit poenitentia. [illegible] ante vel venditionem factam [illegible] C. impedit [illegible]

Hoc privilegium multis in locis [illegible] abrogatum eſt. [illegible] J. [illegible]

## Notæ variorum.

(1) [Ceſſio] [illegible]

[illegible]

quod ſtatuto [illegible] poſſit, idem etiam [illegible] poſſit pacto. Hinc ſi valet ſtatutum de [illegible] valebit etiam pactum, quia ſtatuta ſunt jus quoddam conventionale. [illegible] Licet enim [illegible] ſtatutum [illegible], aſſumere tamen [illegible] poteſt. Berger.

(13) [Quae ad preterea] Quae ad poſteriores [illegible], five illos, qui poſt ceſſionem de novo [illegible], nova ceſſione opus. Berger.

(14) [[illegible] 43] [illegible] quidem hoc, quod [illegible] liberatione prior pars liberatur etiam [illegible]. Verum per ceſſionem [illegible] liberatum, [illegible]. Berger. [illegible]

[illegible]

(15) [illegible]

(16) [illegible]

(17) [illegible]

(18) [illegible] ceſſio, ut Jure [illegible] & in [illegible]. [illegible]

[illegible] in Germania [illegible] [illegible] (4.) [illegible] 1577 [illegible] § 10. [illegible]

# TITULUS IV.

## Quibus ex cauſ. in poſſeſſionem eatur.

(1.) (2.) Miſſio ex PRIMO decreto, eſt actus, quo Creditores decreto prætoris, in poſſeſſionem bonorum debitoris per apparitores, ad res cuſtodiendas, & pignoris jure ſervandas introducuntur, ut reus tædio affectus veniat, reſponſurus ſive pariturus. l. 12. inf. h. t. [illegible] ut in poſſeſſ. legat. ſerv. Germ. Der Einſatz aus erſter Erkäntniß. [illegible]

C Mittit magiſtratus competens: qui (1) in genere poteſt in poſſeſſionem mittere, ut, quando hæc miſſio eſt * Juriſdictionis, [ [illegible] de [illegible] (A.) Si ventris alimentorum nomine in poſſeſſionem mittitur, 7. §. 1. *de ventr. in poſſ. mitt.* ] qui eam juriſdictionem *perfectam* habet. A B

* meri imperii (quando ſcil. fit ex cauſa judicati, vel rei non obtemperandi coercendi gratia) illi, qui hoc habent: non etiam magiſtratus municipales. 26. *pr.* & §. 1. *ad municip.* *Obſ.* [illegible] §. [illegible] *de damn. infect.* niſi ipſi hoc mandatum, [illegible] *de damn. infect.* nam mandata juriſdictione hoc tranſit. [illegible] §. 1. *de offic. ejus, cui mand. juriſdict.* *Hodie* [illegible] qui habent juriſd. baſſam. b.

* (2.) bona, in quæ miſſio fieri debet, *in ſuo territorio* [illegible] habet. [illegible] *de reb. auct. jud.* [illegible] *de juriſd.* *Harmen.* [illegible] *Beſold.* *ad* b.

C. 2. [illegible] Ad petitionem actoris, [illegible] *de damn. infect.* & accuſationem contumaciæ, [illegible] *de judic.* *Carpz.* [illegible] propter juſtam cauſam, [illegible] *N.* [illegible] §. 1. de qua judex ſummarie *cognoſcit* [illegible]

S Mittitur creditor, cui ex quacunque cauſa aliquid debetur, [illegible] *de V. S.* etiam ex actione reali, [illegible] *ut in poſſ. leg.* aut quæ per exceptionem dilatoriam ſuſpendi poteſt, [illegible] *de Verb. Sign. arg.* [illegible] Item creditor conditionalis, [illegible] *de V. S.* [illegible] Legatarius conditionalis, nam etiam huic *cautio* [illegible] interim præſtanda. [illegible] Hinc excluduntur, qui habent tantum naturalem obligationem, *arg.* [illegible] *de V. S.* aut actionem, quæ peremtoria exceptione, eliditur. 7. §. [illegible]

O In debitoris, (*ignorantis*, [illegible] licet *furioſi*, [illegible] §. 1. [illegible]) etiam ſine dolo latentis, [illegible] [*obſ.* [illegible]] bona omnia (in ſola cauſa damni infecti miſſio fit in rem *ſingularem* [illegible]) etiam in quibus *jus tantum* [illegible] habet, ut emphyteuticaria, oppignorata. [illegible] *ut in poſſ. legat.* *arg.* [illegible] *de pignor.* Non etiam in illa, in quibus debitor jus non habet, ut commodata deposita, &c. [illegible] *ut in poſſeſſ. leg.* [illegible] Si in bona pupilli mittitur, ex illis interea pupillo ſunt *alimenta* [illegible] præſtanda. [illegible] *de privil. credit.*

L. a. *Hodie* [illegible] creditores mittuntur, (*D. ſ. Carpz.*) tantum in partem bonorum, pro quantitate debiti [illegible] *ut in poſſ. non conceſſ.* & primum quidem in res *mobiles*, [illegible] &c. *ſecundum* [illegible]

E *Miſſus* [illegible] rem detinet tantum, non poſſidet neque naturaliter, neque civiliter. [illegible] *de damno infect.* [illegible] *C. quando & quando judex* [illegible] *C. de judic.* licet propter realem actionem miſſus ſit [illegible] Indeque conſequitur jus in re, ſive pignus prætorium. [illegible] *de pign.* [illegible] *C. de pign. prætor.* Veteri jure miſſio unius omnibus proderat, & nemo alteri præferebatur. [illegible] *de reb. Auct. jud. poſſ.* *Hodie* [illegible] quilibet ex ſua miſſione eum habet [illegible] fructus tamen conſumere non poteſt, [illegible] illos velit imputare [illegible] *Alii caſus* [illegible] ſunt in [illegible] *de Carb. Edicto.* Adverſus impedientem hanc miſſionem actio datur, ne vis fiat, [illegible]

C Tollitur hoc decretum ſi ante ſecundum decretum debitor contumax (1.) compareat (2) præſtet cautionem *judicatum ſolvi*, [illegible] *C. de præſcr.* [illegible] vel in ſubſidium juratoriam, vel pignoratitiam, §. *Aut. generaliter. C. de Epiſc. & Cler.* *D. ſ. Berl.* [3] expenſas reſtituat, miſſo, [illegible] *C. de præſcr.* [illegible] *de reb. auct.* Sed quam conſequitur, ſi ea [illegible]

 poſſi-

restituit, actione in factum. [illegible] de reb. auct. jud. [illegible] etiam [illegible] dolo & [illegible] datum [illegible] 9. §. 1. de reb. auct. jud. possid.

## Notæ variorum.

(Ad Rubr.) [illegible]

(1) [illegible]

(3) [illegible]

(4) [illegible]

(5) [illegible]

(6) [illegible]

(7) [illegible]

(8) [illegible]

(9) [illegible]

(10) [illegible]

(11) [illegible]

(12) [illegible]

(13) [illegible]

(14) [illegible]

(15) [illegible]

(16) [illegible]

(17) [illegible]

(18) [illegible]

vit nulla vera hujus mutatio colligi poterit. Nec moribus diverſum obtinere puto, ſi ex *primo Decreto* petatur immiſſio. Aliud ſi ex *re judicata*, vel per modum *arreſti* procedatur. Tunc enim nihil amplius intendo, quam ut ſolutionem conſequar. *Stryk.* Jure civili veteri in bona omnia *l. 1. l. 5. §. 2. ff. h. l. 13. ff. ut in poſſ. leg. ſerv.* excepta damni infecti cauſa, *d. l. 1.* jure novo pro quantitate debiti, *Nov. 53. c. 4. §. 1. Ler. ut in poſſ. leg. Mencken.* De uſu moderno hujus miſſionis actum. *tit. de damn. infect. An hodie creditores mittantur tantum in partem bonorum pro quantitate debiti?* Rectius negatur, & ad Obj. *Nov. 53. c. 4. §. 1.* R. Supr. *lib. 36. t. 4.* Ad Obj. *c. ult. ex f. X. ut lite non conteſt.* ibi: *in poſſeſſionem mobilium ipſius vel immobilium pro modo debiti declarati.* R. Secus eſſe Jure Canonico. *Diſſentit Autor. Berger.*

(19) [*Lites ferat*] Non enim eo fine immiſſus eſt, ut fortem conſequatur, ſed tantum ut adigatur debitor ad comparendum. *Stryk.*

(20) [*Alii caſus*] Si legatum perſonæ *conjunctæ* relictum, & hæc legati ſervandi cauſa ſit immiſſa, & aliunde non habeat, interim alenda ex re immiſſa, *d. l. pen.* Idem in *impubere*, cui ſtatus quæſtio mota, ſi interim immiſſus ſit *d. l. 5. §. 3.* Pariter *DD.* hoc adhuc in vidua obtinere putant, quæ ob dotem illatam jure retentionis utens, rationes adminiſtrationis quidem reddere tenetur, ſed alimenta ſua detrahit, *Brunn. ad d. l. pen. n. 2. Stryk.*

Immiſſus ex primo decreto, fructus non percipit.

(21) [*Fidejuſſorem*] Sc. de lite proſequenda, ſeu ſe ſiſtendi coram Judice. *Stryk.*

Tollitur immiſſio, præſtita cautione.

(22) [*Lata culpa*] Habetur enim admiſſus depoſitarius, cui nuda cuſtodia incumbit. *Stryk.*

# TITULUS V.

## De reb. autorit. jud. poſſid. vel vendendis.

*Junge l. 7. C. t. 72. 73. 74.*

(2) D SECUNDUM Decretum eſt alter magiſtratus juſſus, quo ob rei fraudulosam & continuatam contumaciam & latitationem, ex primo decreto miſſus, verus efficitur poſſeſſor: *15. §. 21. de damn. infect.*

C Hoc decretum interponit idem, qui primum: propter latitationem (1.)

C fraudulosam. *7. §. 2. l. 3. quib. ex cauſ. in poſſ.* (2.) quam præceſſit citatio peremtoria, vel tres dilatoriæ, *arg. 8. C. quomodo & quando Jud.* (3.) continuatam Jure * can. & §. *per annum*, [1] *c. f. §. in aliis verò caſibus x. ut lit. non conteſt.* * civ. ſi actio ſit * realis per annum: *2. §. 3. C. de præſcript. 30. ann.*

* perſonalis per tempus arbitrarium. *arg. 1. §. 2. de jur. delib. v. N. 53. c. 4. §. 1. L. 15. §. 21. de damn. infect.* igitur hæc miſſio non fit ſine cauſæ *cognitione.* [2] *c. f. x. ut lit. non conteſt. 9. C. de bon. aut. jud. poſſ.*

S Mittuntur creditores ex primo decreto miſſi omnes (etiam propter actionem *realem* [3] miſſi, *c. f. §. in aliis x. ut lit. non conteſt.*) qui non excipiuntur, ut [1.] miſſi in *bona pupilli*, [4] minoris, furioſi, mente capti, prodigi: *propter 7. §. 9. 10. 11. quib. ex cauſ. in poſſ.* [2.] Creditores conditionales: *7. §. 14. L. 14. §. f. h.* [3.] quibus obſtat exceptio *dilatoria.* [5] *7. §. 14. d. t.*

O In bona debitoris *latentis.* [6] *ut ſupra C. h. t. & O. præc. tit.*

Miſſus rem verè poſſidet, & quidem pleniſſimè, ita, ut actor dominus fiat, in miſſione *de damno infecto.* [7] *15. §. 16. & 33. de damno infecto.* In aliis cauſis * realibus, ita poſſeſſio transfertur, ut petitorium ſaltem reſervetur debitori. *c. f. §. in aliis x. ut lit. non conteſt.* * perſonalibus, quibus petitur * quantitas, poſſeſſio ita transfertur, ut actor habeat poteſtatem *rem vendendi*, [8] ut ex pretio illi ſatisfiat: *7. §. 1. & ſeqq. quib. ex cauſ. in poſſ.*

* certa ſpecies, ita transfertur, ut poſſit eam actor *retinere.* [9]

Quid de his miſſionibus *hodie in Saxon.* [10] *vid. Berl. 1. c. 17. & Carpzov. 1. c. 2. d. 14. 15. & ſeqq.* La.

*Notæ variorum.*

[illegible]

# De privilegiis creditorum.

P[illegible] ex creditoribus [illegible] jure [illegible] jure [illegible], [illegible] debitor [illegible] in bonis habet [illegible] (1.) [illegible]

itens, [illegible] C. depoſ. etiamſi depoſito irregulari, [illegible] de reb. auct. jud. (Diſſ. [illegible]) modo res adhuc extet in bonis debitoris [illegible] depoſ. (2.) Qui commodavit, ſive actione commodati, ſive rei vindicatione experiatur [illegible] & ſeqq. commod. (3.) Qui rem precario conceſſit. [illegible] de precar. (4.) Locator [illegible] locat. (5.) Debitor indebito ſoluto, [illegible] (6.) Liberi res adventitias, caſtrenſes &c. [illegible] (7.) Repetentes res dotales & paraphernales, adhuc apud maritum exiſtentes [illegible] (8.) Venditor in caſu, quo dominium [illegible] (9.) Qui rem furtivam aut in poſſeſſum repetunt, ſive rei vindicatione, ſive condictione furtiva, [illegible] (10.) Pupilli res ſuas adhuc apud tutorem exiſtentes [illegible] (11.) qui hereditatis petitione agunt. [illegible]

b. [illegible] prætorio beneficio, de quo h. t. 6.

a. In concurſu, ſive proceſſu [illegible] vo-

c. cantur, (I.) qui SINGULARE prælationis jus habent: ut (1.) ex conſuetudine ſumtus in confectionem inventarii, judicialis, bey Stadt Rechten. (2.) Sumtus funeris, [illegible] qui ſc. facti ſunt in ſepulturam, curam, &c. ultimi morbi, [illegible] ipſius defuncti debitoris, vel ejus uxoris, liberorum, &c. quos neceſſario funerare debuit [illegible] (3.) Mercedes [illegible] famulorum, ex conſuetudine, [illegible] non etiam ex jure [illegible] DD. [illegible] (4.) Fiſcus ratione debiti [illegible] (5.) Fiſcus quoad tributa & collectas, [illegible] etiam extraordinaria, [illegible] & quoad mulctas [illegible] (6.) Contra [illegible] ſimpliciter [illegible] Cujus loci ordo hic obſervetur, [illegible]

Poſt hos vocantur (II.) qui habent HYPOTHECAM cum PERSONALI PRIVILEGIO conjunctam, cum hi etiam anterioribus hypothecariis præferuntur: [illegible] ut (1.) Qui credidit in [illegible] emendam, & de hypotheca ſibi ſpecialiter proſpexit [illegible] Hoc hodie minus rectè [illegible] (2.) Uxor vero, non etiam [illegible] & liberi ejus ex eodem matrimonio nati. [illegible] (ſcilic. [illegible]) non autem [illegible] nec ſponſa, licet de præſenti [illegible] quoad repetendam dotem [illegible] numeratam, [illegible] quam uxori præſtandam [illegible] & ejus augmentum:

[illegible] Quod Paraphernalia [illegible] autem & donationem propter nuptias, &c. [illegible] habet hypothecam [illegible] C. de [illegible] (3.) qui [illegible] pecunia [illegible] fuit comparata vel refecta, hypothecam fuit consecuti, [illegible] C. [illegible] N [illegible] l. [illegible] dispositione [illegible] credidit in refectionem [illegible], [illegible] vel expressa conventione [illegible] C. de [illegible] (in aliis [illegible]) nam alias tantum habet personale privilegium [illegible] hanc L. [illegible] extendunt ad casum, quo quis in re vendita sibi tacitam hypothecam [illegible], [illegible] donec de pretio satisfiat [illegible] (4.) Pupilli, quorum pecunia res comparata est [illegible] C. de [illegible] Etsi [illegible] debitum sit ex [illegible] tum etiam post Chirographarios vocatur [illegible] Hi invicem concurrentes [illegible] tempore [illegible] privilegiatus contra privilegiatum non gaudet suo privilegio [illegible] Don ex tempore [illegible] [illegible]

[illegible] * (III.) [illegible] HYPOTHECARII [illegible] de quibus [illegible]

[illegible] * (IV.) PRIVILEGIARII, qui tantum personale [illegible] privilegium habent: [illegible] (1.) Deponentes, cujus depositum non est amplius in bonis Depositarii, [illegible] nisi usuras propterea perceperit [illegible] tum enim ab aliis Creditoribus non separatur [illegible] Si tamen usuras non percepit, & usum pecuniæ depositæ depositario [illegible] concessit, etiam [illegible] tum [illegible] tantum Chirographariis præfertur, postponitur autem privilegiariis simpliciter [illegible] nam simpliciter ad mutuum accedit. hunc privilegium non habet tertium [illegible] non concessit, sed expresse conventum, ut res in specie restituatur, tum omnibus privilegium personale habentibus præfertur [illegible] (2.) Respubl. creditrix, [illegible] etiam civitas [illegible] respectu [illegible] nam respectu Romæ hæc privata est [illegible] (3.) Qui ad certam [illegible] rem comparandam vel [illegible] credidit, nec de pignore sibi prospexit [illegible] Hi si sint ejusdem [illegible] tituli, e. g. plures deponentes, omnes concurrunt secundum proportionem geometricam [illegible] si sint diversi tituli collocantur ex causæ favorabilitate. * (V.) Reliqui CREDITORES SIMPLICES concurrunt omnes secundum proportionem geometricam. [illegible]

De jure [illegible], [illegible] in quo ordine quis est ratione sortis, in eo etiam est ratione [illegible] De processu in hoc concursu, vid. Ca. [illegible]

## Notæ variorum.

Concursus creditorum. (1) [illegible] Concursus est [illegible] [illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

(40) [illegible]

(41) [illegible]

(42) [illegible]

(43) [illegible]

(44) [illegible]

(45) [illegible]

(46) [illegible]

[illegible]

(47 [illegible]

(48 [illegible]

(49 [illegible]

[illegible]

(51 [illegible]

(52 [illegible]

(53 [illegible]

[illegible]

(54 [illegible]

(55 [illegible]

(56 [illegible]

(57 [illegible]

verſo, atque impari causâ creditores concurrunt, (e. gr. quando deponens & Reſpubl. ſimul creditam exigit) hi, qui potentiorem cauſam habent (hoc caſu deponens) præferri merentur l. 32 ff h. l. 7. §. 2. ff depoſ. Berlich. p. 1. c. 70. n. 28. In Romana recepta omnes pro rata ſolutionemque impetrant, temporis & cauſæ diverſitate neglecta, p. 1. C. Elect 28. §. ſ atque Carpz. d. 149. Richter. de jur. & prær. credit. c 5. n. 9. Menckon.

In claſſe quinta creditores concurrunt ſecundùm proportionem geometricã.

(58) [Concurrunt] H. e. pro rata crediti. Et temporis ratio hic non habetur, cum non rem, ſed perſonam habeant obligatam; In perſona verò nemo prioritatem prætendere poteſt, l. 32. ff de reb. aut. jud. poſſid. Struv.

Eadem cauſa uſurarũ, quæ ſortis.

(59) [De Jure Civili] Id dubiæ eſt aequitatis, an quis cum ſorte etiam uſuras in eadem claſſe conſequi, aut harum ratione, aliis Creditoribus poſtponi debeat. Hinc jura poſitiva in hujus rei determinatione variant. Jure Saxonico uſuræ poſtponuntur, exceptis nonnullis caſibus, vid. Deciſ. Sax. 8. 9. 10. Struv. d. 7. C. Ex. 44. §. 58. Titius.

Quod diverſum eſt Jure Saxonico.

(60) [Ratione uſurarum] Ita ut uſuræ una cum ſorte ſint ſolvendæ, etiamſi poſteriores creditores ne quidem ſortem ſuam ſalvam habeant; Quod ſecus eſt de Jure Saxonico, ubi uſuræ non ſolvuntur, niſi omnibus creditoribus de ſorte ſit ſatisfactum. Exceptiones vide apud Carpz. lib. 4. ſt. 42 & ſeqq. Brunn. in concurſ. credit. c. 4. §. ſ Struv. In Saxonia, Marchia Brandenburgenſi & civitate Hafnienſi ſecus eſt, Erbach ad Carpz. dec 160. 161. & 174. ubi omnibus creditoribus Capitalia ſolvi debent, antequam ad uſuras perveniatur. Pagenſt num. 2.

(61) [Vid. Carpz.] Creditores ante omnia ſua jura liquidare debent, antea enim Judex definitivè pronunciare non poteſt. Struv. Monendum hic eſt, judicium concurſus eſſe univerſale, non ratione formæ, ſed materiæ, ideo, propterea, quod varii generis proceſſus particulares continent, ita tamen, ut non uno omnes modo, ſed ſuo quemque ratione tractari, oporteat. Ex quo conſequitur, in foro Saxonico exceptiones alicuius indaginis contra inſtrumentum guarentigiatum, ut in judicio quidem concurſus, eſſe attendendas, ſed in judicium reconventionis rejiciendas, cum non liqueat, quomodo debitoris conditio, in detrimentum creditoris, quod ad modum agendi, fraudi eſſe poſſit. Quam eandem ſententiam adhuc Judicium Provocationum Electorale Saxonicum ſecutum eſſe, recognoſco, licet adverſariam opinionem defendat, Salgado Labyrinth. credit. p. 1. c. 16. n. 17. eandemque n. 41. communiter atque juridicè practicari teſtetur Mev. 6. d. 337. num. 3. ubi in concurſu ſubſtantialia proceſſus ſolum, non etiam ſolemnia attendi, non obſcurè tradit. Berger.

# TITULUS VI.

## De ſeparationibus.

*Junge l. 7. C. t. 72.*

De his ex parte proximè actum: De cætero vid. Diſp. inaug. Helfrit.

### Notæ variorum.

Beneficiũ ſeparationis.

[Ad Rubric.] Separationis jus introductum eſt in gratiam Creditorum paternorum, ne hi per reſponſum aes alienum à filio contractum lædantur; Petunt itaque, ut filii bona ſeparentur à bonis paternis, quo ex his paternis creditoribus ſatisfiat. Effectus hujus beneficii eſt, ut chirographarii paterni præferantur omnibus filii creditoribus etiam privilegiatis, e. gr. doti, mercedibus famulorum & omnibus aliis. Struv. Qui ſemel impetrarunt ſeparationem, licet ſolidum ex defuncti bonis haud conſequantur, admitti nequeunt ad patrimonium heredis, l. 5. ff. h. niſi venia ipſis data ſit, ex allegata juſtiſſima ignorantiæ cauſa, l. 1. §. 17. ff. h. Richter. de prærol. credit. c. 2. n. 166. Menckon. Verum eſt, dicis Autor aliquid de ſeparationibus ſupr. tit. de prævil. ſed de illis tantum, quæ jure ordinario competunt: Minimè verò de extraordinario Prætoris beneficio, de quo nos remiſerat ad hunc tit. 9. Pro ſupplemento ergo Schwenzii noſtri hæc habete: Separatio hic eſt diverſorum antea patrimoniorum, debitoris ſcilicet & heredis, ad eandem nunc heredis perſonam pertinentium Judicis autoritate cauſa cognita facta diſtinctio, ut creditoribus hereditariis ex patrimonio defuncti debitoris ante heredis creditores ſatisfiat. Cauſa efficiens ejus eſt Prætor, l. 2. C. de bon. aut. jud. poſſ. quæ remedio antiquitatis (ita vocatur in l. 2. C. de bon. aut. jud.) creditoribus defuncti ſuccurrendum eſſe, admonet eſt. Cum enim omnis contrahens ſcire

ſciatque

[illegible]

[illegible]

# TITVLVS VII.
# De curatore bonis dando.

D **C**uratur bonorum [1] eſt, qui ad bona debitoris mortui, vel abſentis, adminiſtranda conſtituitur. *44. de adm. & peric.* Hic procurator dicitur in *L. 23.*
a. *§. 2. ſ. de hered. inſtit.* Conſtituitur à * magiſtratu, Prætore vel Præſide: A
C hodie à quovis magiſtratu competente, civilem *Jurisdictionem* [2] habente, ad petitionem creditorum, *ſ. h.* interdum etiam ex *officio* [3] *Gail. 2. O. 130. n. 3.*

* Creditoribus (1.) ex primo decreto a.
miſſis: *15. pr. 2. §. ſ. de reb. aut. jud. 8. 9. quibus ex cauſ. in poſſ.* hic tamen nec agere, nec excipere poteſt. [4] *arg. 14. de reb. aut. jud.* (2.) ex ſecundo decreto miſſis: *ſ. h. 9. de curat. furioſ.* hoc verò curatore conſtituto, creditores non poſſunt amplius ipſi adminiſtrare, & contra, *dd. LL.*

B. Ejusmodi curatores eſſe poſſunt, qui non prohibentur, ut *mulier*, [5] *9. de curat. furioſ. ſ. de tutel. minor*, [6] *9. de cur. furioſ. ſ. C. de legit. tutel. v. tit. de curat.* nam in dubio valet argumentum ab illo curatore ad hunc, niſi ratio vel juris diſpoſitio obſtet, quod fit, e. gr. quod Creditorum aliquis hic *poſſit eſſe curator*, [7] *2. §. 4. h. 9. ex quib. cauſ.* & quod hic invitus *non cogatur*. [8] *2. §. 3. h. 4. C. de bon. aut. jud.* licet heres ſit defuncti debitoris. *9. de cur. fur.*

Omnia bona debitoris abſentis vel mortui *2. quib. ex cauſ. 3. §. 1. de Carb. Edict. 23. § 2. ſ. de hered. inſt. 22 §. 1. de reb. aut. jud. poſſid.* O
E Antequam adminiſtret, debet conficere *Inventarium*, [9] *15. de reb. aut. jud.* ſatisdare, *9. C. de poſtlim. reverſ.* & jurare de fideli adminiſtratione: *27. C. de Epiſcopal. audient.* Et quidem * conſtitutus poſt decretum * primum bona cuſtodiat, *48. de adm. & peric. tut. 5. §. 22. in f. ut in poſſ. legat.* quæ ſervando ſervari non poſſunt, *diſtrahat*, [10] *44. in f. d. adm. Tut. v. Coler. de proceſſ. executiv. p. 1. c. 2. n. 156.* nec etiam, ſi aliter creditorum utilitas hoc poſtulet: *23. § 3. de hered. inſt. L. 7. §. 11. 12. ex quib. cauſ. in poſſ.* (Et ſi à Prætore ſit conſtitutus, utiles actiones activè & paſſivè exercet. *3. §. 1. de Carb. Edict. 2. §. 1. h. 11. C. de procurat.* præprimis ſi perituræ ſunt *tempore*, [11] *14. de reb. aut. jud. v. 1. §. ſ. 2. §. 1. h. arg. 7. §. 11. 12. quib. ex cauſ. in poſſ.* etiam per alium, ut ante litem conteſtatam, per actorem; poſt verò per *procuratorem*. [12] *2. §. 1. 11. C. de procurat.* Nemo horum *cavet de rato*, [13] *2. § 1. h. 9. rem rat. hab.* & ſinguli curatores in ſolidum agunt & conveniuntur. *2. §. 2. L. 3. h.*) B C

* Secundum, immediatè poteſt bona vendere, ac creditoribus ſatisfacere. *ſ. h.* Poſt adminiſtrationem curator tenetur (1.) ad rationes, *L. un. C. de ratiocin. op. publ. 1. §. 3. de tutel. & ration. diſtr.* (2.) ad reſiduum. *40. de oper. libert. 5. § 3. de liber. leg. 45. §. 12. de Jur. fiſc.* (3.) ad damnum *lata culpa* [14] datum, [*v. 7. C. arbitr. tut.*] *9. §. 3. de reb. aut. Jud.* hic tamen creditores non etiam habent tacitam hypothecam, *in bonis illorum*. [15] *22 §. 1. de reb. aut. jud. poſſ.* c.

* Curatores tenentur & heredes, *9. §. 7. de reb. aut. jud.* ſi conſtituit * prætor b.
præſentes, actione *mandati* [16] abſentes, negotiorum geſtorum: *22. §. 10. mandat. 6. de N. G. 6. §. 2. L. 18. mand. 60. de R. J.* D

* privatorum conſenſu, actione mandati: *22. §. 10. mand.* qui non d.
mandaverunt, planè *non tenentur*. [17] *ibidem.*

[illegible]

## Notæ variorum.

[illegible]

ſtis, quem nonnullis in locis contradictorem vocant, quod curator bonorum adminiſtret; Contradictor vero locum gerat, in judicio agat, reſpondeat. Quando igitur quæritur, utrum aliquis à creditoribus curator eſſe poſſit? id affirmandum eſt de curatore bonorum per *l. 2. §. 4. h.* non autem de curatore litis cum hic ſibimet ipſi reſpondere nequeat. *Scholter Ex. 46. th. 50.* unde hæc diſtinctio curatoris bonorum & litis officia in foro, præſertim quod ad prædictam quæſtionem, ſervat jurisprudentia, conſulendi videtur *Berger* Diverſa hæc officia in proceſſu Concurſus Creditorum locum ſuum inveniunt. Scilicet *Curator bonorum* bona ad maſſam debitoris pertinentia adminiſtrat, fructus colligit, omniaque reliqua quæ debitoris expedit, uno verbo: *adminiſtrat ad propoſitum; ast Contradictor* nomine debitoris abſentis, vel mortui, inſtrumenta à Creditoribus producta recognoſcit, & exceptiones pro re nata opponit, & ſic *Proceſſus rerum gerit.* Sæpius tamen officium Curatoris bonorum & Contradictoris, in una eademque perſona concurrunt, præſertim ſi bona ad concurſum ſpectantia non adeo ampla ſunt, ut eorum adminiſtratio integrum hominem requirat, *v. loc. cit. §. 30. Ludov. l. d. 2.*

(8) [*Non cogatur*] Quia non eſt munus publicum, ſed privatum *Brunſ.*

(9) [*Inventarium*] Aliquando id ſit autoritate Judicis, e. gr. in concurſu creditorum poſt obſignationem & reſignationem legitimam, antequam curator conſtituatur, quo facto hæc neceſſitas curatori remittitur, *Mand. El. de an. 1682. Ord. Conc.* [illegible] *pr. p. 99* [illegible]

*pignoratitia* & urgentibus circumſtantiis juratoria quoque cautio, nec nuda promiſſione admitti poteſt, *arg. Auth. generaliter C. de Epiſ. & Cleric. l. 15 & quæ facit ex Corp. p. 3 c. 15 d. 52 §3.* Præſtandum vero juramentum *de futura fideli administratione, arg. l. 27. C. d. Ep. aud.* Hinc in iis, qui ad bonorum adminiſtrationem conſtituuntur, (e. gr. [illegible]) eligunt, *d. Mandat. El.* à judicialibus curatoribus ſæpe tantum ſtipulata manu promittitur *Mencken.*

(10) [*Diſtrahat*] Sc. quæ ultra triennium non poſſunt durare, vel ſervando deteriorentur. *Brunſ.*

(11) [*Tempore*] E. gr. ſi ſint annales, bimales, & ubi periculum eſt in mora. *Brunſ.*

(12) [*Procuratorem*] Hodie per uſum eſt [illegible] ſit ipſi facultas ſubſtituendi. *Mencken.*

(13) [*Caveat de rato*] Mandato tamen inſtructus eſſe debent. *Brunſ.*

(14) [*Levem culpam*] Communiter ita dicunt, quod levem culpam curator præſtare debeat, quia curatura hujus eiusmodi curator eſt inſtar depoſitarii. Ipſis creditoribus verò culpam levem, cum ob hoc ſalarium accipiat. *Brunſ.*

(15) [*In bonis alienis*] Quia hæc adminiſtratio non publica eſt, ſed mere privata. Pro eo tamen generaliter in bonis Adminiſtratorum tacitam hypothecam admittit, *arg. l. 20. C. de admin. Tutor. Brunſ.*

(16) [*Mandati*] Si ſalarium ipſis conſtituatur, etiam ex locato conveniri poſſunt. *Brunſ.*

(17) [*Non tenentur*] Quatenus tamen eorum utilitas promotæ, diligentiæ aliisque negotiorum geſtorum. *Brunſ.*

Juramentũ poſitum.

Quæ ſi non vendere ſi non poſſunt diſtrahi debent.

Diverſum reſpectu debitoris & creditorum in culpa, præſtatur.

Conveniuntur ubi ex mandato.

Cautor & Contradictor.

Curatores bonorum creditores inveniunt.

Diſtinctio.

# TITULUS VIII.

## Quæ in fraud. cred. facta ſunt, ut reſtituantur:

*Jung l. 7. Cod. Tit. 75.*

D Actio PAULIANA eſt *prætoria realis*, (1) quâ res in fraudem creditorum alienatæ, à creditoribus *in poſſeſſionem miſſis*, (2) revocantur, *38. §. 4. de uſur. 1. pr. & § 1. h. §. 6. I. de act. v. DD. ad hunc §. 6* D

C *Autore Paulo*, (3) Prætore, *38. §. 4. de uſur. 1. §. 1. h.* Oritur ex *ficto dominio* (4) & prætextur, ac ſi res nunquam alienata eſſet, *§. 6. I. de act.* [ubi etiam media inter actiones reales ponitur,] *junct. §. 1. I. de act. in primis verbis* [*Diſſ. Donell. Vinn. Ludov. ad d. §. 6.*] *v. Fr. Ex 13. q. 4. Aliter eam explicat Hahn. h.* (1.) Si aliquid *geſtum* (5) ſit, *v. 1. §. 1. L. 2. 3. 4. 5.* vel non geſtum: *3. §. 1. h. § f. l. de V. O.* (2.) fraudulo-

Cl. ſo, *animo* (6) & *eventu*, (7) *1. pr. 6. §. 8. 9. h. 10. §. 1. v. 1. C. h.* tum enim in cauſa

* lucrativa, licet *ſolus urgens* (1) doloſè egerit, accipiens tenetur, in quantum locupletior factus eſt, *6. §. 11* A

 * con-

* onerosa, modo tradens & accipiens dolo egerint. 6. §. 8. h. 5. C. h. hic in solidum tenetur 6. §. 11. actor igitur probet fraudem: 10. §. 2. 17. §. 1. h. Carp. 1. Resp. 15. Perez. in C. h. (3.) quo aliquid in bonis debitoris esse desiit: 1. in f. 3. §. 2. ac publicationis eventu * hic non sufficit, 6. pr. & §§. seq. h.

Datur creditoribus, [10] 1. 4. C. h. detrimentum, ut in Cl. 10. 10. §. 1. heredibus, & curatori bonorum, [11] 1. pr.

Contra possessores, ut in Cl. & successores, quatenus possident: [12] 10. §. 5. 11. h. ad revocationem omnis alienationis, ut in D. & Cl. non etiam ad usuras. [13] arg. 10. de pr. ſtip. de fructibus, [14] vid. L. f. § 4. h.

Omnia revocantur in pristinum statum, & perinde est, ac si alienatio facta non esset, 10. §. 22. & pretium in bonis debitoris existens restituitur. consumtum vero non, [15] 7. h.

Intra annum utilem [16] post venditionem bonorum [17] in judicium deducenda est, 1. C. h. agere tamen non valenti, non currit præscriptio: arg. 1. pr. 10. §. 18. post annum verò in tantum competit, in quantum ad possessorem pervenit, 10. §. 24. h.

88\. Carp. 1. Resp. 15. num. 19. ad cognata refer actionem Favianam, & Calvisianam, [18] ac ratione causæ efficientis rescissoriam.

## *Notæ variorum.*

[*Ad Rubr.*] Agitur in hoc titulo de alienationibus quæ fiunt in præjudicium [illegible] creditorum [illegible]. Quod si enim [illegible] creditorum [illegible] [illegible] debitorem [illegible] consequatur, [illegible] creditoribus [illegible] [illegible] communicare [illegible] tenentur, cum jura vigilantibus scripta sint, l. 24. ff. h. t. Sorgh. [illegible] quoque [illegible] ad concursum creditorum, quando etiam hi in bona debitoris missi, debeat [illegible] [illegible] consequantur, [illegible] quod debitor in [illegible] fraudem [illegible] alienaverit, [illegible] [illegible] [illegible], quo casu manifestum est alienationem [illegible] esse [illegible], [illegible] creditores, [illegible] debitoris [illegible], ut ad se [illegible] pervenerit, res alienatas repetant. [illegible] in foro Romano, [illegible] ad [illegible] applicatur: Prætor Paulus [illegible] actionem ad res repetendas [illegible], hinc inde [illegible] actio Pauliana, [illegible] [illegible] [illegible] *Roma* [illegible] [illegible] [illegible] Thom.

(1) [*Prætorem realis*] [illegible] possessorem sequitur [illegible] [illegible] [illegible] [illegible] actiones [illegible] Sorgh. [illegible] actiones Paulianæ [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] jure Romano [illegible] [illegible] [illegible] [illegible] Alciat. [illegible] personales, quod [illegible] [illegible] [illegible] in jure debitoris [illegible] l. 25. §. 2.

[illegible] l. 3. § 1. l. 4. 2. 28. h. t. vel personalis l. 4. [illegible] l. 3. § 1. l. 10. § 14. 15. 22. l. 17. h. t. quod [illegible], in fraudem creditorum [illegible] [illegible] transferre, vel [illegible] [illegible], a creditoribus [illegible] l. 6. § 9. h. t. in possessionem missis, [illegible] in bonis debitoris [illegible], plane non consequuntur [illegible] l. 3. C. h. t. [illegible], ad res alienatas [illegible] [illegible] l. 10. § 20. 21. 22. h. t. [illegible] [illegible] [illegible] [illegible] [illegible] l. 6. § 12. h. t. onerosis, non [illegible], si [illegible] [illegible] [illegible] l. 9. 10. § 2. h. t. Thom.

(2) [*In possessionem missi*] Ut hanc actionem [illegible], requiritur, ut quod alienatum, bonis debitoris [illegible] [illegible] a creditoribus l. 6. § 7. ff. h. [illegible] [illegible] & [illegible] [illegible] [illegible] [illegible], l. 6. § 2. ff. de reb. auct. jud. l. 24. ff. h. Sorgh. [illegible] Quod si [illegible] creditores [illegible] [illegible] [illegible] bona [illegible] sint, [illegible], [illegible] debitore [illegible] [illegible], [illegible] [illegible] non esse, [illegible] [illegible] l. 6. § 7. ff. h. [illegible] l. 24. ff. h. sed [illegible] [illegible] in creditoribus, qui [illegible] [illegible] [illegible] chirographarii [illegible] [illegible] chirographarius [illegible] est. Carp. p. 2. c. 28. d. 178. sed [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible], [illegible] [illegible] possunt. [illegible] [illegible] [illegible] l. 13. § 1. l. 19. ff. de jure fisci l. 3. C. de privil. fisc. Carp. d. l. d. 187. [illegible] ff. 82. 46. [illegible] 81. [illegible] l. 5. [illegible] 58. [illegible]

(3) [*Actione Paulo*] Quo [illegible] hoc [illegible] sit, [illegible]: Paulus [illegible] [illegible] [illegible] [illegible].

[illegible]

(4) [illegible]

(5) [illegible]

(6) [illegible]

(7) [illegible]

(8) [illegible]

(9) [illegible]

(10) [illegible]

11 [illegible]

12 [illegible]

13 [illegible]

[illegible] Titius

(14) [De fructibus] [illegible] ... l. 10. § 22 [illegible] ... Titius

(15) [Confitentur [illegible]] [illegible] Brunn.

(16) [illegible] [illegible] ... l. 35. ff. [illegible] Brunn. [illegible]

[illegible] Titius

(17) [illegible] [illegible] l. 10. § 19 [illegible] l. 30. § 23 ff. [illegible] Brunn.

(18) [illegible] [illegible] Brunn.

LI-

# LIBER XLIII.

## TITULUS I.

## De interdict. ſive extraord. action. & quæ pro his compet.

*Junge l. 8. C. t. 1.*

Interdicta [illegible] ſunt actiones [illegible] de poſſeſſione vel quaſi, competentes, [illegible] nunquam *famoſa.* [illegible] *13. de vi & vi armata.*

Sunt 1) à cauſa efficiente Realia, in quibus actor ſe fundat in poſſeſſione, e. g. utrubi, uti poſſidetis, [illegible] & perſonalia, [illegible] quæ ex delicto oriuntur, [illegible] (2.) à ſubjecto in Simplicia, in quibus alter actor, alter reus eſt, & Duplicia, ubi uterque actor eſt, & reus, ut interdicta retinendæ poſſeſſionis, [illegible] (3.) ab objecto Perſonalia, quæ verſantur circa jus perſonæ, e. g. de liber. exhib. & Realia, circa jus rerum, divini ac humani juris, publici & privati. (4.) à forma prohibitoria, Reſtitutoria, Exhibitoria & Mixta, [illegible] (5.) à fine ſunt illa, quæ ad rem familiarem pertinent, [illegible] vel Adipiſcendæ poſſeſſionis, quibus agimus ad adipiſcendam poſſeſſionem, quam nunquam habuimus, vel Recuperandæ, quibus agimus ad recuperandam poſſeſſionem amiſſam, vel Retinendæ, quibus agitur ad retinendam poſſeſſ. vel Mixta, quæ partim ad [illegible] acquirendam, partim ad retinendam poſſeſſionem pertinent, [illegible] (6.) ratione proceſſus Ordinaria, in quibus obſervatur ordinarius proceſſus, & extraordinaria ſive Summaria, in quibus Judex etiam ſine libello procedit, videns tantum, quis ſit *in poſſeſſione,* [illegible] non quis poſſideat, [illegible] (7.) *ratione durationis,* [illegible] Perpetua, quæ rei perſecutionem habent, & *Annua* [illegible] quæ ex delicto ſunt, [illegible]

*REGULÆ.* petitorium *ab ordine* [illegible] poſſeſſorium, [illegible] (2.) Commodius eſt agere poſſeſſorio, ubi ſufficiunt leves *probationes,* [illegible] quam petitorio, [illegible] niſi dominium probationes *in promtu* [illegible] ſint, [illegible] (3.) Solo poſſeſſorio inſtituto, Judex de proprietate judicare *non poteſt,* [illegible] licet ex actis de juſta petitoris cauſa conſtet [illegible] (4.) Solo petitorio inſtituto, Judex de poſſeſſione judicare nequit, licet de illo conſtet ex actis, [illegible] (5.) Inſtituto petitorio, actor eo omiſſo ante cauſæ concluſionem & ſententiam *poteſt inſtituere* [illegible] poſſeſſorium: [illegible] (6.) Poſſeſſorium

de ꝑo-

& petitorium eorum eodem judice [illegible], [illegible] [illegible] de [illegible] [illegible] de R. V. [illegible] de A. vel A. P. [illegible] (7) Cauſa poſſeſſionis prior, petitoria poſterior eſt. [illegible] de A. vel A. P. [illegible] de R. V. [illegible] C. [illegible] & hoc ordine inverſo, adverſarius poteſt appellare. [illegible] C. de appellat. [illegible] (8) Poſſeſſorium retinendæ poſſeſſionis non poteſt cumulari [illegible] (9) Poſſeſſoria [illegible] recuperandæ poſſeſſionis [illegible] cumulari cum petitorio. [illegible] De jure Can. & [illegible] cumulari poſſunt. [illegible] de cauſa poſſ. & proprietat. [illegible] Judex tamen pro arbitrio [illegible] ut partes hoc vel illud agant, [illegible] de cauſ. poſſ. & proprietat. [illegible]

## Notæ variorum.

(1) [Interdictis] [illegible]

[illegible]

(2) [illegible]

(3) [illegible]

(4) [illegible]

[illegible]

(5) [illegible]

(6) [illegible]

[illegible]

[illegible]

[illegible]

# TITULUS II.
## Quorum bonorum.
*Jung. l. 8. Cod. Tit. 2.*

D Eſt interdictum adipiſcendæ poſſeſſionis, quod bonorum poſſeſſor adverſus illum, qui pro poſſeſſore vel herede poſſidet, ad poſſeſſionem rerum hereditariarum conſequendam, intentat.

N Non eſt actio realis, *neque perſonalis* (1) nec ordinaria, ſed extraordinaria perſecutio; à prætore conceſſa. Eſt ratione ſubjecti, ſimplex, ratione objecti, privatum & univerſale. l. ſ. 1. [*[illegible]* (2) *[illegible] de furt.*] ratione finis, adipiſcendæ poſſe-

poſſeſſionis. 1. §. 1. v. 1. pr. *Fa[illegible]* [1] negotio hic conſequimur poſſeſſionem, quam in poſſeſſore hereditatis petitione, nam hæc eſt remedium petitorium, illud poſſeſſorium. *vid. tit. de interdict. Roga. 2.*

L Datur directum, bonorum poſſeſſoribus, *1. pr.* utile; heredi ab inteſtato, ſuo & extraneo, *23. de A. vel A. P. Gail. 2. O. 120.* & *ex teſtamento.* [4] *arg. 1. pr. ff. 1. C. h. [ Diſſ. Mindan. propter 2. 3. C. h.]* Sive inſtitutus ſit ex aſſe, ſive ex certa portione, *arg. 2. 1. ſi pars hered. pet.* non etiam, qui ex certa re, *13. C. de her. inſt.* niſi coheredem *non habeat,* [5] *vid. tit. de her. inſt. O.*

P Contra poſſeſſores pro herede, vel pro poſſeſſore. *1. pr. v. tit. de her. pet. P. n. 5.* modo rem corporalem *poſſideant.* [6] *2. ff. f. C.*

O Ad res hereditarias, principaliter univerſales. *1. pr.* corporales, *2.* utile interdictum ad incorporales, quæ corporalibus *inhærent.* [7]

Q Præſcribitur *30. annis.* [8] *arg. 3. C. de 30. vel 40. ann. præſcr.* Eliditur *exceptione.* [9] dominii: nam qui ſe dominum dicit, ille non poſſidet pro herede, aut poſſeſſore, *Hotom. [illegible] 30. [illegible]*

## *Notæ variorum.*

(1) [*Neque poſſeſſionis*] Quæ tamen [illegible] [illegible] [illegible] [illegible]

[illegible]

(2) [*Obſ.* 2.] [illegible]

[illegible]

(3) [*Aucthore*] [illegible]

(4) [*Ex teſtamento*] Ad Obſ. [illegible]

(5) [*Non habeat*] [illegible]

(6) [*Poſſideant*] [illegible]

(7) [*Inhærent*] V. gr. [illegible]

(8) [30. *annis*] [illegible]

[illegible]

[illegible] ... *Titius.*

(5) [illegible] ... *Bergh.*

# Remedium l. fin. c. de edict. d. Hadr. toll.

## *Junge l. 6. C. tit. 33.*

Est remedium poſſeſſorium, *quo heres ſcriptus* (1) à judice competente vi teſtamenti exhibiti, vitio viſibili carentis, ſe in poſſeſſionem rerum hereditariarum *mitti petit.* (2) *v. Ca. 6. Reſp.* [illegible] Eſt remedium poſſeſſorium adipiſcendæ poſſeſſionis. *L. f. C. h. Bach. ad Tr.* [illegible] *Ca. 6. Reſp.* [illegible] [*Diſſ. Rechb.* [illegible]] Datur heredi, etiam partiario, & utile inſtituto, primi & ulterioris gradus. [illegible] & hujus heredi, [illegible] *modo teſtamentum* (3) exhibere poſſit, [illegible] etiam nuncupativum, à Notario in ſcripturam redactum. [illegible] Ad omnes res hereditarias, ab alio nondum occupatas. Quæ *aliorum ſunt indagines*, (4) ordinario judicio, non hic *peragenda ſunt.* (5) [illegible] Ita miſſus vere poſſidet. Excludunt hoc remedium [1.] *vitium viſibile*, (6) [2.] legitima contradicendi *cauſa.* (7) *Finck. O.* [illegible] [3.] præſcriptio *30. annor.* (8) [illegible] *C. de 30. & 40. ann. præſcr.*

### *Notæ variorum.*

(1) [*Quo heres ſcriptus*] [illegible] ... *Manzius.*

(2) [*Mitti petit*] [illegible] ... *Manzius.*

(3) [*Modo teſtamentum*] [illegible] ... *Manzius.*

(4) [*Aliorum indagines*] [illegible] ... *Bergh.*

(5) [*Peragenda ſunt*] [illegible] ... *Bergh.*

(6) [*Vitium viſibile*] [illegible] ... *Bergh.* [illegible] ... *Manzius.*

(7) [*Cauſa*] [illegible] ... *Bergh.*

(8) [*30. annor.*] [illegible] ... *Bergh.*

[illegible]

# TITULUS III.
# Quod legatorum.
*Junge L. 8. C. tit. 43.*

Eſt interdictum [1] adipiſcendæ poſſeſſionis, l. 1. §. 1. quod heredi competit, ad adipiſcendam poſſeſſionem rerum hereditariarum, ab aliis legati, vel fideicommiſſi nomine, privata auctoritate *occupatarum.* [2] (*vid. L. un. C. ut quæ in propr. cauſa L. 15. quod met. cauſ.*) Modo [1] relictum aliquid ſit ab herede, ſc. e. g. legatum, fideicommiſſum. *L. un. C. quod legat.* licet ſit univerſale: *Mindan. de in* [illegible] *tit. 17 num. 31 L. un. C. h. t. §. 2.*) [2] à perſona honorata illud privata auctoritate ſit occupatum, l. 1. §. 2. (antequam heres illud poſſederit : l. 1. §. 2. nam aliàs non hoc, ſed *remedium*, [3] *L. 3. C. unde vi,* competit. *1. C. de leg. at. n. 1. §. 1.* [illegible] *L. 3. C. unde vi, et & 19. ff. quod met. cauſ.* [illegible] *Harpprecht. ad tit. Inſtit. de int.* [illegible] *n. 4. E contra negant* [4] *Cu.* [illegible] *Perez. in C. ad L. Jul. de vi* [illegible] *p. 188.*) Hinc non datur in mort. cauſ. donatione, ſi donator rem ipſe poſſ. [5] donatario. l. 1. §. 5. *h. Diſſ. Hahn. h. propter L. 26. ff. & p. C. ad L. Falcid.* [3] citra [illegible] heredis poſt aditionem hereditatis. l. 1. §. 2. 11. *h.*

Datur heredi & bon. poſſeſſori ex teſtamento, & ab inteſt. l. 1. §. 10. *ff. L. un. C.* [illegible] heredibus. l. 1. §. 3. *ff. L. un. C.* contra occupantem, *ut in D. & Cl.* eorum heredes & alios ſucceſſores etiam particulares : *l. 1. §. 13. 14.* Ad omnes res, *ut in D. & Cl.* etiam incorporales. *l. 1. §. 8.*

Reſtituuntur res occupatæ, caveat tamen prius perſona honorata, de re reſtituenda, *detracta quarta* [6] Falcidia. *l. 1. §.* [illegible] (*Obſ. 15. quod vi aut.* [7] [illegible] *C. unde vi.*) Conceditur durante ad omne intereſſe *heredis.* [8] *l. 1. §. 2. h.*

*Notæ variorum.*

(1) [*Eſt interdictum*] [illegible]

(2) [*Occupatarum*] [illegible]

(3) [*Remedium l. 3*] [illegible]

(4) [*Negant*] [illegible]

[illegible]

[illegible]

TIT.

# TITVLVS IV.

## Ne vis fiat ei, qui in poſſ. miſſus erit.

Hoc interdictum eſt prohibitorium, mixtum, 1. §. 2. h. Inde datur hodie actio in factum, pœnalis, quæ miſſo ex primo decreto, & heredi, 1. §. 1. competit, adverſus omnes, qui dolo malo faciunt, quo minus miſſus quiete poſſit eſſe in poſſeſſione, ad hoc, ut quanti res eſt, in quam miſſio facta eſt, præſtetur, 1. pr. §. 1. Si ex primo decreto miſſus in poſſeſſ. non admittatur, (1) 1. pr. §. 1. L. 2. pr. h. aut turbetur, (2) 1. §. 1. aut depellatur (3) id. 1. §. 3. dolo malo: 1. pr. h. Itaque ex delicto oritur. add. LL. §. 18. I. de action. 1. §. 2. h. 4. h. Datur miſſo, ut in D. 1. §. 2. licet alieno nomine, 2. §. 1. & heredibus: 1. §. 2. non etiam contra heredes, (4) 1. §. 6. h. 22. C. de pœn. niſi ex cauſa legatorum (5) & fideicommiſſorum ſervandorum miſſus impediatur 1. §. 6. Ad intereſſe, ut in D. & C. & rem principalem petere poteſt actor, licet intereſſe ab alio (6) acceperit. 3. §. 15. de tab. exh. arg. 1. §. 5. h. junct. 1. §. 1. de condict. furtiv. Regulariter eſt annua (7) 1. §. 6. h. 35. de O. & A. Ex cauſa Legatorum vero & fideicommiſſorum miſſo, perpetua (8) patet. 1. §. 6.

### Notæ variorum,

[Ad Rubr.] [illegible]

(1) [Non admittatur] [illegible]

(2) [Turbetur] [illegible]

(3) [Depellatur] [illegible]

(4) [Contra heredes] [illegible]

(5) [Legatorum] [illegible]

(6) [ab alio] [illegible]

(7) [Annua] [illegible]

(8) [illegible]

[illegible] (Pergamum) [illegible]

[illegible]

# TITULUS V.

## De tabulis exhibend.

*Junge l. 8. C. 1. 7.*

D

Hæc interdictum (a) eſt exhibitorium, 1. § 9. Inde competit actio in factum, quæ datur omnibus, quorum intereſt, adverſus illos, qui tabulas ultimæ voluntatis defuncti ſe exhibere poſſe vel debere negant, ad hoc, ut tabulas exhibeant, vel intereſſe præſtent. Cauſa efficiens Prætor, 1. pr. propter. C

1. pr. [illegible] quemadmodum aperiantur 3. § 8. ad. exh. deſictum [illegible] D. [illegible] alias quam exhibitio peteretur [illegible] perſecutione. 2. § 5. teſtam. quemadmodum S

aper. 1 § 1. de tab. exhib. Datur omnibus quorum intereſt, 3. § 10. 13. 14. [illegible] D.

etiam heredi in ſuo corpore, ſc. antequam adeat hereditatem, L. [illegible] C. h. 3. § 12. & P

13. [illegible] h. non etiam, ſi jam adiit, 3 § 2. ad exhib. 2 § 5. 3. teſtam. quemadmod. aper. 3. h.

3. h. nam tum vindicat, [illegible] & agit ad exhibendum. [illegible] 3 § 1. h. 3. § 2. ad exhib. contra O

[illegible], [illegible] D. etiam [illegible] 3 § [illegible] pr. 3. § [illegible]

Ad * tabulas [illegible] D. teſtamenti [illegible], [illegible] 1. pr. § 2. h. & intereſt cauſa donat. [illegible] C. de m. c. donat. [illegible] L. L. (modo de jure prætorio ſubſiſtant ex forma exterma [illegible] l. 2. pr. ad. L. Corn. de falſ. [perſonæ inhabilitas &c. [illegible] 1 § 3 &c.] authenticas, L. 1. L. [illegible] teſt. quemadmod. aper. [illegible] confirmatas. 1. § [illegible] ut poſſint apprehendi, L. 3. § 2. [illegible]. [illegible] 1. pr. teſtam. quemadmod. aper.

* [illegible] ſi hac actione victus prætori non pareat, ad intereſſe: 3. § [illegible] & 15. cujus præſtatio tamen ab hære de facta, omiſſam reddit ulteriorem legati petitionem, ſecus eſt, ſi certus cum præſtetur. [illegible] 3 § 14. h. 7 § 1 de cond. furtiva [illegible] de except. Eſt perpetua. 3 § [illegible] (Obſ. 11. [illegible] de O. & A. Caput [illegible])

Sequentes tituli fere ſola ſua inſcriptione explicati ſunt. Ut: VI. Ne quid in loco Sacro fiat, [illegible] VII. De loco & itineribus public[illegible] VIII. Ne quid in loco publico vel itinere [illegible] fiat. IX. De loco publico fruendo [illegible] X. De via publica, & ſi quid in ea factum dicatur. [illegible] XI. De via publica & itinere publico reficiendo [illegible] XII. De fluminibus ne quid in flumine publico, ripave ejus fiat, quo pejus navigetur XIII. Ne quid in flumine publico fiat, quo aliter aqua fluat atque uti priore æſtate fluxit. XIV. Ut in flumine publ. navigare liceat XV. De ripa munienda. [illegible]

### Notæ variorum.

(a) [Hoc interdictum] [illegible]

[illegible]

[illegible]

(2) [illegible]

(3) [illegible]

(4) [illegible]

(5) [illegible]

(6) [illegible]

(7) [illegible]

(8) [illegible]

(9) [illegible]

(10) [illegible]

(11) [illegible]

(12) [illegible]

(13) [illegible]

(14) [illegible]

(15) [illegible]

(16) [illegible]

(17) [illegible]

(18) [illegible]

Ad TITULUM VI. [illegible] Ad Tit. VI.

[illegible] Tit. VII.

[illegible]

Tit. VIII.

Tit. IX.

Tit. X.

Tit. XI.

[illegible]

Th. XIII

[illegible]

Th. XII.

[illegible]

Th. XIV

[illegible]

Oooo oooo 3

[illegible]

Tit. XV. [illegible] *De ripa muniendâ Titulo XV* [illegible]

[illegible]

# TITULUS XVI.

## De vi, & vi armata.

*Jung. l. 8. C. tit. 4.*

D Ex hoc interdicto [a] hodiè datur *actio perſonalis*, [b] ei, qui de poſſeſſione rerum immobilium vi dejectus eſt, adverſus dejicientem, ad poſſeſſionem cum omni cauſa & intereſſe recuperandam.

C Cauſa efficiens Prætor: *1. pr.* Et delictum ſc. vis (*1. pr. §. 3.* ſive publ. ſive privata: *1. pr. b. junct. 3. de publician in rem act.* e. g. terror armorum: *3. §. 5. b. vid. tit. quod met. cauſa R.*) expulſiva: (*1. §. 3.*) qua quis dejicit (*1. §. 45. L. 1.*) poſſeſſorem, (qui poſſidet animo vel corpore, *6. §. 1. de A. v. A. P. 1. §. 24. 26. L. 3. §. 14. b.* civiliter vel naturaliter. *1. §. 9. 10. 25. 26. inf. vid. 4. §. 22. de uſurp.* Ex jure Codicis tamen ſufficit occupatio *vacuæ poſſeſſionis*: [c] *L. ſ. C. unde vi.*) *ex immobili* [d] re. *1. §. 3. 4. b.*

S Datur dejecto, *ut in D. & C.* (uſufructuario, Vaſallo, &c. *ut in C. 3. §. 13.* ſive bonâ *ſive m. f.* [e] poſſederit: *1. §. pr. v. §. 6. T. de interdict. 17. b. ſpoliatus* [f] ante omnia eſt reſtituendus. *c. 3. x. de reſt. ſpol. 6. 7. C.* niſi alternus petitio ſit *poſſeſſor*, [g] *pr. depoſ. 31. de R. J. Perez. b. n. 18. Zaſ. ad §. b. n. 17.* & heredibus. *1 §. 44.* (*Diſſ. Weſemb.* [h] *th. 29. per. L. 1 §. 9. 15.*) Si dejiciantur, qui rem tantum detinent, tum videtur *e. g.* locator per colonum dejectus: igitur non hunc, ſed illi hoc remedium datur: *1. §. 10. 22. L. ſ. b.* (*Obſ. 7.* [i] *§. 11. verum, dein. 12. 18. b.*) hi tamen novo jure abſentis veri poſſeſſoris nomine, etiam ſine mandato hac agere poſſunt. *1. C. §. per. unde*

P Contra dejicientem, *ut in D. & C.* mandantem & mandatarium, *1. §. 12. 13.* & *ratihabentem*, [k] *1. §. 14.* licet poſſeſſionem reliquerit: *4. §. 22. de uſurp.* Non etiam contra heredes, niſi quatenus locupletiores inde facti: *1. §. ſ. L. 2. 3. 4.* contra parentes & patronos hæc actio non datur, ſed actio in factum, detracta mentione violentiæ, niſi armatâ manu expulerint. [l] *1. §. 43.* (*Diſſ. Weſemb. per L. 3 1. §. 6.* [m] *de furt.*)

O Ad recuperandam poſſeſſionem rerum immobilium, *ut in D. 1. §. 3. 6. 7.* & quæ in illis fuerunt, mobilium, tanquam acceſſoriarum: *1. §. 6. 32. &c.* licet alienarum & peregrinarum, *1. §. 33. 34.* & *ad omne intereſſe.* [n] *1. §. 31. 41. b.* Utilis actio datur etiam ad quaſi poſſeſſionem rerum incorporalium, *Gail. 1. O. 77.*

E Spoliatum licet *ab ipſo Judice*, [o] *6. C. b. c. 7. de reſt. ſpol. Gail. 1. O. 78.* illicò eſt reſtituendum. *p. §. 6. C.* cum omni cauſa & intereſſe, *1. §. 41. pr.* etiam fructibus percipiendis: *1. §. 41. ſ. 4. C.* Actor jurat in litem, *1. §. 34. 35. ſ. 9. C.* ut & ejus heres. *Bach. V. 2. D. 21. th. 3. lit. A. B. ¶¶.* contra dejicientem & ejus heredes [p] *Bach. d. l. Diſſ. Myſ. 4. O. 12. V. Brunn. ad L. 9. C. h. n. ult. §.*

*Profect.*

[illegible] anno utili, [illegible] (& quod fructus percipiendo, & intereſſe, [illegible] quod pervenit, etiam poſt annum [illegible].) [illegible] verus dominus abſens, & [illegible] de poſſeſſione [illegible] Et remedium [illegible] quod datur ad rem [illegible], ſine ullius temporis, loci, perſonarum aut rerum differentia: [illegible]

## Notæ variorum.

[illegible]

[illegible]

# TITVLVS XVII.

## Uti poſſidetis.

*Junge l. 8. C. t. 6.*

Hoc Interdictum fuit prohibitorium [illegible] Hodie inde datur actio Praetoria, realis, [illegible] poſſeſſori, contra quocunque modo turbantem, ad poſſeſſionem retinendam, defendendam, & conſervandam: [illegible]

Ratio-

[illegible] Subject[illegible] est [illegible]: [illegible] tamen est, qui prior ad judicium provocavit, [illegible], si hoc simul fecerint, quem sors determinaverit. [illegible] *de judic.*

Datur rerum immobilium POSSESSORI, [illegible] naturali aut civili [illegible] justo vel injusto, modò actor in justam possessionem non acquisierit *ab adversario.* [illegible] *de A. vel A. P.* quod probandum. *vid. Mascard. de probat.* [illegible] *Wesemb.* [illegible] *de A. vel A. P.* verè vel etiam præsumtivè: e. g. si probatur *antiquior* (2) possessio: [illegible] *de prob. C.* nisi adversarius probet, sibi possessionem justo titulo interim quæsitam. [illegible] *de prob.*) quod sc. possideat tempore *litis contestatæ* (3) [illegible] *de interdict.* Si utrinque partis æquales sint probationes, *ambo* (4) relinquuntur, donec alteruter in petitorio vicerit [illegible] *Perez. in C.* [illegible] In possessione TURBATO. (5) [illegible] *de interdict.* Quasi possessori turbato datur utilis actio, *non autem de* [illegible] (6) de possessione [illegible] *de A. vel A. P.* [illegible] [*Diss. Wesemb.* (7) [illegible]] Contra turbantem, [illegible] qui scil. Jus alterius obscurum reddit [illegible] intra vel extra judicium, verbis, vel factis: [illegible] Ad possessionem rerum [illegible] (8) [illegible] Ad retinendam quietam possessionem, & ut actor possessor declaretur secundariò etiam turbator interesse præstet caveatque; de inposterum non turbando. *Wesemb.* [illegible] [*Diss.* [illegible]] (9) Præscribitur quoad interesse propter præteritam turbationem, *anno* (10) [illegible] Perimit hanc actionem exceptio vitiosæ possessionis ab adversario [illegible] Non tamen domini. [illegible] nisi *statim probare* (11) possit. *Perez.* [illegible]

## Notæ variorum

[illegible]

[illegible]

[illegible]

# TITULUS XVIII.

## De ſuperficiebus.

Superficies ſignificat hic illud, quod eſt in alieno ſolo inædificatum, implantatum, infixum, vel aliô modô impoſitum: Et ſic accipitur dupliciter. (1.) materialiter pro ipſa ædificiorum re, (2.) formaliter pro jure ſuperficiario: quod eſt *ante demonstratum* [illegible] (*73. §. 1. L. ſeq. de R. V.* [illegible]) *Non eſt ſervitus* [illegible] personalis, [illegible] nec realis [illegible] *& quia non producit alienam* [illegible] [illegible]) quod quis habet, [illegible] in ſuperficie. [illegible] in ſolo vel ædificiô alieno poſita, [illegible] ita, ut ſolo cohæreat, ſive mediatè, ſive immediatè. [illegible] *D. arg.* [illegible] *quod vi aut clam.*

Eſt vel *Eccleſiaſticum*, [illegible] vel ſæculare: perpetuum, vel temporale.

Cauſa efficiens *voluntas domini*, [illegible] *arg. L. f. C. de reb. alien. non alien.* [illegible] *Publ. in rem.* liberam alienationem habentis, [illegible] * tacita, quæ colligitur ex præſcript. long. temp. *arg.* [illegible] *C. de long. temp. præſcript.*

* expreſſa, quæ declaratur * inter vivos quaſi traditione: [illegible] *de Publ. in rem* [illegible] *de A. R. D.* [illegible] *ex juſta cauſa.* [illegible] e. g. emtione, dote, ſolutione, &c. *non etiam locatione,* [illegible] niſi præterea inter partes convenerit, ut liceat e. g. in fundo locato ædificare, ædificiaque *jure domini* [illegible] uti, [illegible] *de R. V.* [illegible] quod factum præſumitur, ſi permiſſum ſimpliciter eſt ædificare in re ad longum tempus locata, ſecus, ſi ad modicum tempus locata. [illegible] *de Landem.* [illegible]

* ultima voluntate, [illegible]

Superficiei conſtitutæ effectus ſunt quoad * ſuperficiarium, in ſtatu * tranquillo * principalis ſive lucrativus, quod ſuperficiarius eſt ſuperficiei quaſi dominus: [illegible] eamque poſſidet *naturaliter* [illegible] (*Obſ.* [illegible]) In ſolo autem *jus nullum* [illegible] habet, ſed adhæreat perſonalem, ut dominus ſibi concedat ſuperficiem in ſolo habere: ſi tamen ſuperficiarius rem oppignoraverit, *præfertur dominus* [illegible] annuam penſionem ex ſuperficie *petens,* [illegible] huic hypothecario. [illegible] *quæ pot. in pign.*

* Minus principalis ſive oneroſus, quod debeat ſuperficiarius (1.) tributa, collectas, &c. onera publ. præſtare, [illegible] ſive ſint ordinaria, *ſive extraordinaria* [illegible] *arg.* [illegible] *de uſufr.* [illegible] *de uſu & uſufr.* (2.) ſuperficiem propriis ſumtibus ſartam tectam ſervare: *arg.* [illegible] *de uſufr.* (3.) præſtare Solarium ſive annuam penſionem, [illegible] *quæ pot. in pign.* Den Bodenzins/ Grundzins. [illegible] *Speidel.* [illegible] Bodenzins * Turbatæ poſſeſſionis, * actio * poſſeſſoria ex *interdicto* * *de ſuperficiebus*, [illegible] quæ eſt actio realis, duplex, *commoda poſſeſſionis*, [illegible] ſuperficiario, adverſus quemcunque turbantem, ad poſſeſſionem ſuperficiei retinendam & conſervandam competens. Oritur ex poſſeſſione ſuperficiei [illegible] hæc eadem obtinent, quæ in interdicto: uti poſſidetis. [illegible] Datur ſuperficiario poſſiden-



coni-

P contra quoſvis turbantes, etiam *ipſum dominum* [12] *l. pr. §. 2. h. t. 3. §. 4. uti poſſid.*
(*N.B. hoc repete dicto, ad tit. Uti poſſidetis. &c.*) * unde vi,
B ſi ſc. de ſuperficie vi dejectus ſit. *1. §. 3 de vi & vi armat.*

* Petitoria, ut (1.) *utilis rei vindicatio,* [13] *l. pr. §. 3. h. 3. §. 7. uti poſſid. 3. §. 3. de oper. nov.*
S *nunc. 16. §. ſ. de pignor. act. 73. & 2. de R. V.* quæ eſt actio realis, ſuperficiario ad-
C verſus quemcunque ſuperficiei poſſeſſorem, ad jus ſuperficiarium vindicandum
O competens *dd. LL.* Cauſa eſt, quia Prætor, *3. §. 7. uti poſſid. 3. §. 3. de nov. oper. nunc. 16. §. ſ. de pign. act.* dat jus ſuperficiarium ſive utile dominium. Datur ſuperficiario, qui ſuperficiei poſſeſſionem amiſit, contra quemcunque poſſeſſorem, etiam dominum: *1. §. 4. h.* Ad vindicandum ipſum quaſi dominium ſuperficiei declarandum, ejusque quaſi poſſeſſionem, cum omni intereſſe reſtituendam. Certis caſibus etiam datur (2.) actio *familiæ erciſcundæ* [14] *10. C. fam. erciſc.* (3.) communi dividundo: *1. §. 8. h.* (4.) utilis confeſſoria, ad ſervitutes, ſuperficiei debitas vindicandas. *3. §. 3. de nov. oper.* D
*nunc.* (5.) *Publiciana* [15] in rem. *12. § de Publ. in rem.* * Exceptio con- E
tra dominum directum vindicantem. [16] *1. §. 4.* Et generaliter: quæ dominus ſoli directè facit, hoc ſuperficiarius facit utiliter. *3. §. 3. de nov. oper. nunc.*

O Finitur (1.) interitu ipſius ſuperficiei: *20. §. 2. de damn. infect. arg. 2. ff. h. §. 2. l. de uſufr.* (in parte etiam minima retinetur, *arg. 13 de uſufr.*) nec reviviſcit, licet e. *g. alia domus* [17] ſit ædificata. (2.) Conſolidatione, *10. § ſ de leg.* quod etiam fieri poteſt per uſucapionem ſi e. g. ſuperficiarius cauſam poſſeſſionis mutet [18] *2. C. de præſcr. 30. vel. 40. ann.* (3.) temporis lapſu, ſi ſcil. ad certum tempus conceſſum ſit, atque hoc effluxit: *1. § 3.* non etiam ceſſatione ſolvendæ *penſionis* [19] (*Obſ. 3. C. de locat.* [20] *54. §. 1. locat. 2. C. de jure Emphyt.*) Directum dominum, b
quod is in ſuperficie, ut & in fundo habeat directum dominium, *1. §. 4. h. 2. h.* unde rem directò vindicat. [21] *1. §. 4.* eamque poſſidet civiliter, *3. §. 7. uti poſſid.* penſionem petit *perſonali actione.* [22] *1. §. 1. h.*

## Notæ variorum.

Der Super-ficiar dominium utile & jure directo.

Superficiarius habet utile dominium.

[*Ad ſtatu*] Superior hic debetur jus ſuperficiarium & in fundo das Bau-Recht und das Grund-Recht [illegible] quæ ſuperficiem eo habet. *[illegible] Dominus eſt. Beyer.*

(1) [*Utile dominium*] Quia de ipſo non ſuperficiem libere diſponere, & illum ad arbitrium ſuum pro lubitu accommodare poteſt. Ita tamen, ut fundum haec adhaereant, ab alio irrogandae, quae rerum plerumque præſtat ſolarium [illegible] (Grundzins) Quod ſemel eſt in illo, qui *uſumfructum bonis habet. Beyer.* Cum de differentia [illegible] inter dominum hoc dominium utile [illegible] communem, ea tamen adhuc [illegible] [illegible] opera partem eſſe [illegible] [illegible] a hac de ea materia breviter afferam. [illegible] apud omnes ſere deprehendes *ſuperficiarum ſuperficiei quaſi dominum eſſe* [illegible] *fundo* [illegible] *jus* [illegible], quia [illegible] [illegible] Item *ſuperficiarium* [illegible] [illegible] Recht ſive (Gebäu-Recht), *Emphyteuticarium* [illegible] Canonem: das Erbrecht. [illegible] [illegible] [illegible], [illegible], [illegible], [illegible], [illegible], [illegible] & quæ ſunt [illegible] [illegible] [illegible], [illegible] [illegible] [illegible] [illegible] & quæ reſpondet, quod ſolum [illegible] [illegible]. Deprehendes hanc [illegible] *De. Beyer poſſ. ff. h. t.* [illegible] [illegible] [illegible] [illegible] *emphyteuſin & ſuperficiem,* non [illegible] [illegible] [illegible] [illegible], ſed *emphyteuſin ad ſolos agros, ſuperficiem vero ad ſola ædificia pertinere. Item, Emphyteuſin quandam ad ſolos fundos publicos, jus ſuperficiarium autem ad fundos privatos pertinere.* Sed ea [illegible] [illegible] [illegible] [illegible] [illegible]. Quia enim [illegible], quæ Emphyteuſis [illegible] ad [illegible] *pertineat* & [illegible], [illegible] [illegible], quod *emphyteuſis* etiam ad ſolos fundos publicos pertineret, quod hoc ad non, [illegible] [illegible] [illegible], [illegible] [illegible] [illegible] differentia inter *emphyteuſin & ſuperficiem* quam ipſe [illegible] De. Beyer, unde & ſequenti [illegible] ad-

[illegible]

(2) [illegible]

(3) [illegible]

(4) [illegible]

(5) [illegible]

(6) [illegible]

(7) [illegible]

(8) [illegible]

(9) [illegible]

(10) [illegible]

(11) [illegible]

[illegible]

(12) [illegible]

[illegible]

TIT.

# TITULUS XIX.

## De itinere actuque privato.

D Proponuntur hic (1) de diverſis ſervitutibus, 1. pr. interdictum * (1.) prohibitorium, 1. §. 1. Ex quo hodie datur quaſi poſſeſſori itineris actus & viæ actio realis, contra quemcunque turbatorem, ad quaſi poſſeſſionem illam retinendam & defendendum. Cauſa efficiens Prætor: 1. pr. § 2. & quaſi poſſeſſ. dictarum ſervitutum, *L. ſ.* v. 1. §. 2 ſi ſc. utatur ſervitute, *ut ſervitute*, (2) *ſ. h.* (& quidem ante rem in judicium deductam per annum, non qualem continuum, ſed *per XXX.* (3) dies: 1. §. 2. 3. inundatione impeditus, hic reſtituitur in integrum 1. § 4. &c.) ſive ipſe, ſive per alium: 1. §. 7. *L.* 3. §. 4. 7. *h.* Modo non vitioſe ab adverſario poſſideat, 1. *pr.* ad minimum XXX. dierum illius anni. 1. §. ſ *L.* 2. 3. *h.* Datur quaſi poſſeſſori dictarum ſervitutum *ut in D. & C.* & utilis uſufructuario 3. §. 1. 2. Ad quaſi poſſeſſionem dictarum ſervitutum ruſticarum: 1. *pr.* §. 1. quæ ſi *in urbano* (4) prædio ſint, illarum nomine datur utilis actio. ¶ Actor declaretur quaſi poſſeſſor ſervitutis: deſiſtat adverſarius à turbatione, intereſſe præſtet, caveat de non amplius turbando, 7. *de op. quam & æſtim.* 3. § 3. *ſ. h.* Contraria ſunt *in C.*

(2.) *aliud prohibitorium*, (5) ex quo hodie datur actio realis quaſi poſſeſſori dictarum ſervitutum, cui jus eſt illas reficiendi; contra quemcunque impedientem, ut à refectionis impedimento deſiſtat. 3. § 11. Datur quaſi poſſeſſori, qui jus reficiendi ſervitutem habet (unde etiam ſummatim *probare debet*, (6) ſervitutem legitime eſſe conſtitutam. 3 §. 13. *h.* v. 2. §. 2 *de interdict.* modo non vitioſe ab adverſario habeat poſſeſſionem, aut poteſtatem reficiendi: 3. §. 11. 13. 14.) ejuſque heredibus & ſucceſſoribus *particular.* (7) 3. §. 2. v. 6. contra impedientes refectionem, *ut in D.* 3. §. 11. 12. 4. *pr.*

Ut autem hæc actio in judicium deduci poſſit, caveat actor adverſario de vitio *operis*: (8) h. e. opus damnoſum non fore. 3. §. 11. *L.* 2. §. *ſ. h.*

### *Notæ variorum.*

(1) [*Proponuntur hic*] [illegible]

(2) [*Ut ſervitute*] [illegible] *Bergh.*

(3) [*Per XXX*] [illegible] *Bergh.*

(4) [*In urbano*] [illegible] *Bergh.*

(5) [*Aliud Prohibitorium*] [illegible]

(6) [*Probare debet*] [illegible] *Bergh.*

[illegible]

(7) [*Non*

(7) [Particulares] Servitus enim non debetur. & ſic. [illegible] ad [illegible] noctis. [illegible] pro [illegible] ſervitus. Averyſ.

(8) [Opere] id eſt, de reparando [illegible] poſſit [illegible] vicino [illegible] per [illegible], vel [illegible]. Averyſ.

# TITVLVS XX.

## De aqua quotidiana & æſtiva.

De aqua ducta ſunt IV. interdicta: *(1.) de aqua quotidiana: vid. §. 9. cujus nomine hodie datur actio quaſi poſſeſſori hujus ſervitutis ad id, ne in quaſi poſſeſſione vel uſu ejus impediatur vel turbetur, contra turbatorem, ut intereſſe præſtet, & de non amplius turbando caveat. 7. Cauſa efficiens eſt quaſi poſſeſſio hujus ſervitutis, quam quis habuit bona fide 1. §. 10. 19. nec vitioſe ab adverſario 1. pr. etiam uno die vel nocte, (1) in anno ante judicium acceptum. 1. §. 4. Hic ductus ſive ſit urbana ſive ruſtica ſervitus, nihil refert. 1. §. 11. modo ducatur ex capite, ſeu ubi aqua naſcitur. vid. 1. §. 5. 6. 7. 8. *(2.) De aqua æſtiva (2) quo Prætor prohibet, ne quis poſſeſſor in uſu ſive quaſi poſſeſſione aquæ æſtivæ ductus impediatur aut turbetur. Hoc per omnia convenit cum præcedenti: niſi quod ratione objecti hic requiratur aqua æſtiva, & ratione temporis hic requiratur uſus per VI. menſes prioris æſtatis, ſc. ab æquinoctio verno ad æquinoctium autumnale. 1. §. 32. 33. ſi quis hac tamen, æſtate uſus ſit, aut etiam hyeme, tum habet utile interdictum. *(3.) De aqua e caſtello quæ ex caſtello ducitur: 1. §. 38. quod eſt interdictum prohibitorium, retinendæ poſſeſſionis, quo prætor prohibet, ne ille, cui à Principe a jure ex caſtello ducere conceſſum eſt, aquam ducere impediatur, neve illi vis fiat. Hoc præter objectum differt etiam in eo ab aliis, quod non jure ſervitutis, ſed permiſſu Principis (3) ducitur. 1. §. 40. quod etiam probare (4) debet actor 2. §. 1. de interdict.

### Notæ variorum.

(1) [Uno die vel nocte] [illegible] eſt, [illegible] tempore [illegible]. ſed hic de ſola [illegible] in poſſeſſione [illegible] eſt, ſatis [illegible]. Averyſ.

(2) [De aqua æſtiva in l. 7.] [illegible] Doctrin. [illegible] Quomodo quoad conceptum differant, aqua quotidiana & æſtiva, [illegible] l. 1. §. 3. & 4. Quotidiana [illegible], ab æſtiva [illegible]. Quotidiana [illegible] eſt, qua [illegible], vel [illegible]. [illegible] eſt, qua [illegible] ad [illegible]. [illegible] l. 1. §. 34. h. t. [illegible] quod in interdicto de aqua quotidiana [illegible] poſſe [illegible] in anno ante judicium acceptum hac ſervitute uſum fuiſſe, etiam uno die vel nocte l. 1. §. 4. & 6. h. t. In interdicto de aqua æſtiva [illegible] per ſex menſes [illegible] l. 1. §. 31. eod. [illegible] quod JCTUS [illegible] per ſex menſes [illegible], ſed hoc [illegible] probare debere. quod [illegible] in poſſeſſione vel quaſi [illegible] hyeme. [illegible] probare [illegible], [illegible] hyeme uſum fuiſſe. [illegible] Quemadmodum in interdicto de aqua quotidiana [illegible] uno die vel nocte, [illegible] in interdicto de aqua æſtiva probare [illegible]

*operter, quod præcedente æſtate aliquando, licet unica die vel nocte, eandem uſum aliter habuerit. Ludov. h. diſt. 1.*

(3) [*Ex caſtello*] Caſtellum hic eſt receptaculum aquæ publicæ, *l. 1. §. 39. in fin. ff. h. t. Struv.*

(4) [*Permiſſu Principis*] Hodie etiam Magiſtratus eam poteſtatem habemus, *Mencken.*

(5) [*Probare*] Inde de hoc interdicto dicunt, quod ſimul contineat cauſam *proprietatis*: Probata enim conceſſione Principis plenè quis obtinet, tam in petitorio, quam poſſeſſorio. Niſi fortè Princeps per ſub- & obreptionem in præjudicium alterius aquæductum conceſſerit. *Struv.*

# TITULUS XXI.
## De Rivis.

*(4) DE refectione aquæductus: quod eſt prohibitorium, quo prætor prohibet, ne vis fiat quaſi poſſeſſori 1.
aquæductus, qui illum refici curat, adverſus quemcunque impedientem, ut à turbatione deſiſtat, de non amplius turbando caveat, & omne intereſſe præſtet. Datur
2 quaſi poſſeſſori, qui præcedente anno non vitioſè ab adverſario aquæductu uſus eſt, hic ſufficit ſola poſſeſſionis probatio. *l. §. 13. de itin. actuque priv. v. L. f. h.* *Quid ſit rivus*, (1) ſpecus, ſepta? *vid. L. 1. §. 2. &c.* quid reficere? *v. 1. §. 4.* quid purgare? *v. 1. §. 7.* Præter finem hoc cum aliis convenit. *l. §. 7. h.*

### Notæ variorum.

Rubr. divisio.

[*Ad Rubric.*] Hic Titulus utilitatem præbere poterit illis, qui rivos per alienos agros ad molendinum deducunt & impediuntur, in Ausräumung der Waſſer-Grabens. *Struv.*

Quid ſit rivus.

(1) [*Quid ſit rivus*] Eſt autem rivus locus per longitudinem depreſſus, quo aqua decurrat, *l. 1. §. 2. ff. h.* *Incile* eſt locus depreſſus ad latus fluminis, ex eo dictus, quod inciditur lapis, vel terra, unde primum aqua ex flumine agi poſſit, *l. 1. § 5. ff. h.* reficere dicitur, qui corruptum in priſtinum ſtatum reſtaurat, *l. 1. §. 6. ff. h.* Utile hoc interdictum ad refectionem & purgationem foſſarum & puteorum *l. 1. §. 4. ff. h.* nec non cuniculorum, (ſive canalium) quibus vapor trahatur in balnea applicatur, *l. 3. §. 6. ff. h. l. 26. ff. de damn. infect. Mencken.*

# TITULUS XXII.
## De Fonte.

HOc *interdictum* (1) agit de fonte, & ejus uſu, de aquæ hauſtu, & pecoris ad aquam appulſu, item lacu, puteo, piſcina, modò perpetuam cauſam, & aquam vivam habeant: ad ciſternas *non pertinet*, (2) *L. un. §. 4.* convenit cum præced. præter Objectum. *L. un §. 7. h.*

### Notæ variorum.

Solus fontem reficiens, reliquos pro rata ad refundendas expenſas compellere poterit.

(1) [*Hoc interdictum*] De uſu *non impediendo* nec non de refectione & purgatione non impedienda, quod etiam eſt *retinendæ poſſeſſionis* & datur illi, qui hoc anno ſine vitio ab adverſario aqua fontana &c. uſus eſt, adverſus eum, qui fontem &c purgare, reficere prohibet, ad hoc, ut prohibere deſinat & cautionem de non amplius turbando præſtet, *l. 1. §. 6. 10. ff. h.* Hodie nemo facilè reficiendi onus ſuſcipiet, niſi vicinos in partem ſumtuum vocaverit, aut ſi ſolus fontem animo repetendi impenſas reficiat, reliquos, quibus id oneris incumbit, pro rata ad expenſas refundendas compellere poterit, *l. 40. §. 1. L. 41. ff. de damn. infect. Engelbr. ff. h. th. 86. Mencken.*

(2) [*Non pertinet*] Quia non habent cauſam perpetuam. Ciſternæ enim dicuntur loca depreſ- Ciſterna.



ſione,

[illegible] Tit. XV. [illegible] *De rupe* [illegible] [illegible] Sed cum hoc [illegible]

# TITULUS XVI.

## De vi, & vi armata.

*Jung. l. 8, C. tit. 4.*

D Ex hoc interdicto [1] hodiè datur *actio perſonalis*, [2] ei, qui de poſſeſſione rerum immobilium vi dejectus eſt, adverſus dejicientem, ad poſſeſſionem cum omni cauſa & intereſſe recuperandam.

C Cauſa efficiens Prætor: *1. pr.* Et delictum ſc. vis (*1. pr. §. 3.* ſive publ. ſive privata: *1. pr. h. junct.* [illegible] e. g. terror armorum: [illegible]) expulſiva: (*1. §. 3.*) qua quis dejicit (*1. §. 45. L. 3.*) poſſeſſorem, (qui poſſidet animo vel corpore, [illegible] civiliter vel naturaliter. [illegible] *de uſurp.* Ex jure Codicis tamen ſufficit occupatio vacuæ *poſſeſſionis:* [3] *L. 5. C. unde vi.*) ex immobili [4] re. *1. §. 3. h. t.*

S Datur dejecto, *ut in D. & C.* (uſufructuario, Vaſallo, &c. [illegible]) ſive bonâ ſive m. f. [5] poſſederit: [illegible] *h. ſpoliatus* [6] ante omnia eſt reſtituendus, [illegible] C. niſi alterius petitio ſit [illegible], [7] [illegible] & heredibus. *1. §. 44.* (*Diſſ. Wiſſenb.* [8] [illegible]) Si dejiciantur, qui rem tantum detinent, cum videatur e. g. locator per colonum dejectus: igitur non huic, ſed illi hoc remedium datur. *1. §. 10. 22. L. 5. h.* (*Obſ. 7.* [9] *§. 11.* [illegible] *h.*) hi tamen novo jure abſentis veri poſſeſſoris nomine, etiam ſine mandato hoc agere poſſunt. *1. C. ſi per vim*

F Contra dejicientem, *ut in D. & C.* mandantem & mandatarium, *1. §. 12. 13.* & *ratihabentem,* [10] *1. §. 14.* licet poſſeſſionem reliquerint: *4. §. 28. de uſurp.* Non etiam contra heredes, niſi quatenus locupletiores inde facti. *1. §. 5.* [illegible] contra parentes & patronos hæc actio non datur, ſed actio in factum, detracta mentione violentiæ, niſi armatâ manu expulerint. [11] *1. §. 43.* (*Diſſ. Wiſſenb. per L. 52. §. 6.* [12] *de furt.*)

O Ad recuperandam poſſeſſionem rerum immobilium, *ut in D. 1. §. 3. 6. 7.* & quæ in illa fuerunt, mobilium, tanquam acceſſoriarum: [illegible] licet alienarum & perentiarum, *1. §. 33. 34.* & *ad omne intereſſe.* [13] *1. §. 31. 41. h.* Utilis actio datur etiam ad quaſi poſſeſſionem rerum incorporalium, *Gail. 2. O. 77.*

S Spoliatus licet *ab ipſo Judice,* [14] [illegible] *de reſt. ſpol. Gail. 1. O. 76.* illicò eſt reſtituendus. [illegible] *C.* cum omni cauſa & intereſſe, *1. §. 41. 42.* etiam fructibus percipiendis: [illegible] Actor jurat in litem, [illegible] C. ut & ejus heres, [illegible] contra dejicientem & ejus heredem [15] [illegible]

Proſint.

[illegible] (4) anno utili, [illegible] (ſc. quand fructus percipien-dos, & intereſſe, [illegible] nam quod pervenit, etiam poſt annum debetur. [illegible]) niſi verus dominus [illegible], & [illegible] poſſeſſionem de [illegible] [illegible] Remedium, [illegible] Et remedium [illegible] quod datur ad rem re-ſtituendam, ſine omni temporis, loci, perſonarum aut rerum differentia: [illegible] Alia remedia [illegible]

## Notæ variorum.

(1) [illegible]

(2) [illegible]

(3) [illegible]

(4) [illegible]

(5) [illegible]

(6) [illegible]

(7) [illegible]

(8) [illegible]

(9) [illegible]

(10) [illegible]

[illegible]

# TITVLVS XVII.

## Uti poſſidetis.

*Junge l. 8. C. 1 4.*

Hoc Interdictum fuit prohibitorium 1. § 4. Hodiè inde datur actio Praetoria, realis, immobilium poſſeſſori, contra quocunque modò turbantem, ad poſſeſſionem retinendam, defendendam, & conſervandam: 1. § 1. & 4. Ratio-

Ratione Subjecti est duplex: [illegible] tamen [illegible], qui prior ad judicium provocavit, aut, si hoc simul fecerunt, quem sors determinavit. [illegible] *de judic.* H

Datur rerum immobilium POSSESSORI, [illegible] *L.* [illegible] §. [illegible] naturali aut civili S
[illegible] §. [illegible] D. [illegible] justo vel injusto, modo actor in justam possessionem non acquisiverit *ab adversario.* [illegible] *de A. vel A. P.* quod probandum. *vid. Mascard. de probat.* [illegible] *de A. vel A. P.* vere vel etiam præsumtive: e. g. si probatur *antiquior* [illegible] possessio: [illegible] *de prob.* C. nisi adversarius probet, sibi possessionem justo titulo interim quæsitam: [illegible] *de prob.*) quod se possideat tempore *litis contestatæ* [illegible] §. [illegible] *l. de interdict.* Si utriusque partis æquales sint probationes, *ambo* [illegible] relinquuntur, donec alteruter in petitorio vicerit. [illegible] *Perez.* [illegible] *C.* [illegible] in possessione TURBATO. [illegible] §. [illegible] *l. de interdict.* Quasi possessori turbato datur utilis actio, non *utile de jure* [illegible] de possessione [illegible] *l. de interd.* [illegible] §. [illegible] *de A. vel A. P.* [illegible] *C.* [illegible] [*Diss. Wesemb.* [illegible] *propter* [illegible] *de A. vel A. P.* [illegible]] Contra turbantem, *ut in D.* qua scil. Jus alterius obscurum reddit. [illegible] *de interdict.* [illegible] intra vel extra judicium, verbis, vel facto: [illegible] §. [illegible] Ad possessionem rerum *incorporalium,* [illegible] *de fonte.* [illegible] *Besold.* [illegible] *consil.* [illegible] Ad retinendam quietam possessionem, & ut actor possessor declaretur: secundario etiam turbator interesse præstet, caveatque; de imposterum non turbando. *Wesemb.* [illegible] *Gail.* [illegible] §. [illegible] [*Diss.* [illegible]] Præscribitur quoad interesse propter præcedentem turbationem, [illegible] Perimit hanc actionem exceptio vitiosæ possessionis ab adversario, *ut supra.* Non tamen domini. [illegible] *D.* [illegible] *D. Perez.* [illegible] posse. *Perez.* [illegible]

P O R d C

## *Notæ variorum.*

(*Ad Rubric.*) [illegible]

(1) [*Ab Adversario*] [illegible]

(2) [*Antiquior*] [illegible]

(3) [*Litis contestatæ*] [illegible]

[illegible]

(4) [illegible]

(5) [illegible]

(6) [illegible]

(7) [illegible]

(8) [illegible]

(9) [illegible]

(10) [illegible]

(11) [illegible]

[illegible]

# TITULUS XVIII.

## De ſuperficiebus.

D Superficies ſignificat hic illud: quod eſt in alieno ſolo inædificatum, implantatum, inſitum, vel aliô modô impreſſum: Et ſic accipitur dupliciter, (1.) materialiter pro ipſa ebre, (2.) formaliter pro jure ſuperficiario: quod eſt *[illegible]* (1) *[illegible]* Non eſt ſervitus (2) perſonalis, *[illegible]* nec realis *[illegible]* ) quod quis habet, *[illegible]* in ſuperficie *[illegible]* in ſolô vel ædificiô alieno poſita, *[illegible]* ita, ut ſolo cohæreat, ſive mediatè, ſive immediatè. *[illegible]*

D

† Eſt vel *Eccleſiaſticum*, (4) vel ſeculare: perpetuum, vel temporale.

C Cauſa efficiens *voluntas domini*, (1) *[illegible]* liberam alienationem habentis, *[illegible]* * tacita, quæ colligitur ex præſcript. long. temp. *[illegible]*

* expreſſa, quæ declaratur * inter vivos quaſi traditione: *[illegible]* (2) *[illegible]* e. g. emtione, dote, ſolutione, &c. *[illegible]* (3) *[illegible]* niſi præterea inter partes convenerit, ut liceat. e. g. in fundo locato ædificare, ædificioque *[illegible]* (4) uti. *[illegible]* quod factum præſumitur, ſi permiſſum ſimpliciter eſt ædificare in re ad longum tempus locata, ſecus, ſi ad modicum tempus locata. *[illegible]* A

a * ultima voluntate, *[illegible]*

B Superficiem conſtituentis effectus ſunt quoad * ſuperficiarium, in ſtatu * tranquillo * principalis ſive lucrativus, quod ſuperficiarius eſt ſuperficiei quaſi dominus: *[illegible]* (5) *[illegible]* eamque poſſidet *naturaliter* (10) *[illegible]* (Obſ. *[illegible]*) In ſolo autem *jus* *[illegible]* (11) habet, ſed *[illegible]* perſonalem, ut dominus ſibi concedat ſuperficiem in ſolo habere: ſi tamen ſuperficiarius rem oppignoraverit, *[illegible]* (12) annuam penſionem ex ſuperficie *[illegible]*, (13) hanc hypothecamus. *[illegible]* B

C

D

c * Minus principalis ſive oneroſus, quod debeat ſuperficiarius (1.) tributa, collectas, &c. onera publ. præſtare, *[illegible]* ſive ſint ordinaria, *[illegible]* (14) *[illegible]* (2.) ſuperficiem propriis ſumtibus ſartam tectam ſervare: *[illegible]* (3.) præſtare Solarium ſive annuam penſionem, *[illegible]*

e *[illegible]* den Bodenzins. Grundzins. *[illegible]* Bodenzins * Turbatæ poſſeſſionis, * actio * poſſeſſoria ex *[illegible]* D

E

F * *de ſuperficiebus*, (15) quæ eſt actio realis, duplex, *[illegible]* (17) ſuperficiario,

G adverſus quemcunque turbantem, ad poſſeſſionem ſuperficiei retinendam & conſervandam competens. Oritur ex poſſeſſione ſuperficiei *[illegible]* hæc eadem obtinent, quæ in interdicto: uti poſſidetis. *[illegible]* Datur ſuperficiario poſſidenti C

S

contra quosvis turbantes, etiam ipsum dominum [illegible] 1. pr. §. 2. h. l. 3. §. 2. uti possid. (N.B. hoc [illegible], ad uti possidet. &c.) * unde vi, si sc. de superficie vi dejectus sit. 1. §. 1 de vi & vi armat.

* Petitoria, ut (1.) utilis rei vindicatio, [14] 1. pr. §. 3. h. l. 3. §. 7. uti possid. 3. §. 3 de nov. oper. nunc. 16. §. 5. de pignor. act. 73. & c. de R. V. quae est actio realis, superficiario adversus quemcunque superficiei possessorem, ad jus superficiarium vindicandum competens d. l. l. Causa cognita Praetor, 3. §. 7. uti possid. 3. §. 3. de nov. oper. nunc. 16. §. 5. de pign. act. & jus superficiarium sive utile dominium. Datur superficiario, qui superficiei possessionem amisit, contra quemcunque possessorem, etiam dominum 1. §. 6. h. Ad vindicandum ipsum quasi dominium superficiei declarandum, ejusque quasi possessionem, cum omni interesse restituendam: Certis casibus etiam datur (2.) actio familiae erciscundae [15] 10. C fam. ercisc. (3.) communi dividundo: 1 §. 8 h. (4.) utilis confessoria, ad servitutes, superficiei debitas vindicandas. 3. §. 3. de nov. oper. nunc. (5.) Publiciana [16] in rem. 12. §. de Publ. in rem. * Exceptio contra dominum directum vindicantem. [17] 1. §. 4. Et generaliter: quae dominus soli directe facit, hoc superficiarius facit utiliter. 3. §. 3. de nov. oper. nunc.

Finitur (1.) interitu ipsius superficiei: 50. §. 2. de damn. infect. arg. 2. ff. h. §. 1. l. de usufr. (in parte etiam minima retinetur, arg. 11 de usufr.) nec reviviscit, licet e. g. alia domus [18] sit aedificata. (2.) Consolidatione, 86. §. 5 de leg. 1 quod etiam fieri potest per usucapionem si e. g. superficiarius causam possessionis mutet [illegible] [20] 5. C. de praescr. 30. vel. 40. ann. (3.) temporis lapsu, si scil. ad certum tempus concessum sit, atque hoc effluxit: 1. §. 3. non etiam cessatione solvendi pensionis [21] (Obst. 3. C de locat. [22] 54. §. 1 locat. 2. C. de jure Emphyt.) Directum dominum, licet quod is in superficie, ut & in fundo habeat directum dominium, 1. §. 4. l. 2. h. unde rem directo vindicat, [23] 1. §. 4. eamque possidet civiliter, 3. §. 7. uti possid. pensionem petit personali actione. [24] 1. §. 1. h.

## Notae variorum.

[illegible]

(1) [Utile dominium] [illegible]

[illegible]

[illegible]

(2) [illegible]

(3) [illegible]

(4) [illegible]

(5) [illegible]

(6) [illegible]

(7) [illegible]

(8) [illegible]

(9) [illegible]

(10) [illegible]

(11) [illegible]



(12) [illegible]

(12) [illegible]

(13) [illegible]

(14) [illegible]

(15) [illegible]

(16) [illegible]

(17) [illegible]

(18) [illegible]

(19) [illegible]

(20) [illegible]

(21) [illegible]

(22) [illegible]

(23) [illegible]

(24) [illegible]

(25) [illegible]

(26) [illegible]

(27) [illegible]

(28) [illegible]

(29) [illegible]

TIT.

# TITULUS XIX.

## De itinere actuque privato.

Proponuntur hic (1) de diversis servitutibus, 1. pr. interdictum* (1.) prohibitorium, 1. §. 1. Ex quo hodie datur quasi possessori itineris actus & viæ actio retinendæ, contra quemcunque turbatorem, ad quasi possessionem illam retinendam & defendendam. Causa efficiens Prætor: 1. pr. §. 2. & quasi possess. dictarum servitutum, L. f. [illegible] si sc. usus sit servitute, [illegible] (2) f. h. (& quidem ante rem in judicium deductam per annum, non quidem continuum, sed per XXX. (3) dies: [illegible] inundatione impeditus, hic restituatur in integrum [illegible]) sive ipsi, sive per alium: [illegible] Modo non vitiosè ab adversario possideamus, 1. pr. ad minimum XXX. diebus illius anni. [illegible] Datur quasi possessori dictarum servitutum ut in D. & C. & utilis usufructuario: [illegible] Ad quasi possessionem dictarum servitutum rusticarum: 1. pr. §. 1. quæ si in urbano (4) prædio sint, illarum nomine datur utilis actio. ¶ Actor [illegible] quasi possessor servitutis: desistat adversarius à turbatione, interesse præstet, caveat de non amplius turbando. 7. de aq. quot. & æstiv. [illegible] Contraria sunt ut C.

(2.) aliud prohibitorium, (5) ex quo hodie datur actio retinendæ quasi possessori dictarum servitutum, cui jus est illas reficiendi; contra quemcunque impedientem, ut à refectione impedimento desistat. 3. §. 11. Datur quasi possessori, qui jus reficiendi servitutem habet (unde etiam secundario probare debet, (6) servitutem legitimè esse constitutam. [illegible] modò non vitiosè ab adversario habeat possessionem, aut potestatem reficiendi: 3. §. 11. 15. 16.) ejusque heredibus & successoribus particular (7) [illegible] contra impedientes refectionem, ut in D. 3. §. 11. 12. in pr.

Ut autem hæc actio in judicium deduci possit, caveat actor adversario de vitio operis (8) h. e. opus damnosum non fore. [illegible]

### Notæ variorum.

(1) [Proponuntur hic] [illegible]

(2) [illegible] [illegible]

(3) [Per XXX] [illegible] 30 dies [illegible]

(4) [In urbano] [illegible]

(5) [Aliud Prohibitorium] [illegible]

(6) [Probare debet] [illegible] per 30 dies [illegible]

(7) [illegible]

*operitur, quod præcedente æstate aliquando, item media die vel nocte, eundem uſum alter habuerit. Lauterb. h diſſ. 1.*

(3) [*Ex caſtello*] Caſtellum hic eſt receptaculum aquæ publicæ, *l. 1. §. 39. in fin. ff. h. t. Stryk.*

(4) [*Permiſſu Principis*] Hodie etiam Magiſtratus eam poteſtatem habentis. *Mencken.*

(5) [*Probare*] Inde de hoc interdicto dicunt, quod ſimul contineat cauſam proprietatis; Probata enim conceſſione Principis plenè quis obtinet, tam in petitorio, quam poſſeſſorio. Niſi fortè Princeps per ſub- & obreptionem in præjudicium alterius aquæductum conceſſerit. *Strykh.*

# TITULUS XXI.
## De Rivis.

*(4) DE refectione aquæductus: quod eſt prohibitorium, quo prætor prohibet, ne vis fiat quaſi poſſeſſori aquæductus, qui illum refici curat, adverſus quemcunque impedientem, ut à turbatione deſiſtat, de non amplius turbando caveat, & omne intereſſe præſtet. 2.
3 Datur quaſi poſſeſſori, qui præcedente anno non vitioſè ab adverſario aquæductu uſus eſt, hic ſufficit ſola poſſeſſionis probatio. *3. §. 13. de itin. actuque priv. v. L. f. h. Quid ſit rivus,* (1) ſpecus, ſepta? *vid. L. 1. §. 2. &c.* quid reficere? *v. 1. §. 6.* quid purgare? *v. 1. §. 7.* Præter finem hoc cum aliis convenit. *3. §. 7. h.*

### Notæ variorum.

Hujus tituli uſus.

[*Ad Rubric.*] Hic Titulus utilitatem præbere poterit illis, qui rivos per alienos agros ad molendinum deducunt & impediuntur, in Außräumung der Waſſer-Graben. *Stryk.*

Quid ſit rivus.

(1) [*Quod per rivum*] Eſt autem rivus locus per longitudinem depreſſus, quo aqua decurrat, *l. 1. §. 2. ff. h. Fovile* eſt locus depreſſus ad latus fluminis, ex eo dictus, quod incidit lapis, vel terra, unde primum aqua ex flumine agi poſſit, *l. 1. § 5. ff. h.* reficere dicitur, qui corruptum in priſtinum ſtatum reſtaurat, *l. 1 §. 6. ff. h.* Utile hoc interdictum ad refectionem & purgationem foſſarum & puteorum *l. 1. §. 4. ff. h.* nec non cuniculorum, (ſive canalium) quibus vapor trahatur in balneis applicatur, *l. 3. §. 6. ff. h. l. 26. ff. de damn. infect. Mencken.*

# TITULUS XXII.
## De Fonte.

HOc interdictum (1) agit de fonte, & ejus uſu, de aquæ hauſtu, & pecoris ad aquam appulſu, item lacu, puteo, piſcina, modò perpetuam cauſam, & aquam vivam habeant: ad ciſternas *non pertinet*, (2) *L. un. §. 4.* convenit cum præced. præter Objectum. *L. un §. 7. h.*

### Notæ variorum.

Solus fontem reficiens, reliquos pro rata ad refundendas expenſas compellere poteſt.

(1) [*Hoc interdictum*] De uſu *non impediendo* nec non de refectione & purgatione non impediendo, quod etiam eſt *retinendæ poſſeſſionis* & datur illi, qui hoc anno ſine vitio ab adverſario aqua fontana &c. uſus eſt, adverſus eum, qui fontem &c. purgare, reficere prohibet, ad hoc, ut prohibere deſinat, & cautionem de non amplius turbando præſtet, *l. 1. §. 6. 10. ff. h.* Hodie nemo facilè reficiendi onus ſuſcipiet, niſi vicinos in partem ſumtuum vocaverit, aut ſi ſolus fontem animo repetendi impenſas reficiat, reliquos, quibus id oneris incumbit, pro rata ad expenſas refundendas compellere poterit, *l. 40. §. 1. l. 41. ff. de damn. infect. Engelbr. ff. h. th 86. Mencken.*

(2) [*Non pertinet*] Quia non habent cauſam perpetuam. Ciſternæ enim dicuntur loca depreſſa. Ciſterna.

[illegible]

# TITULUS XXIII.

## De Cloacis.

Horum nomine duo ſunt [1] interdicta (1.) [illegible] (2.) [illegible]

### Notæ variorum.

[illegible]

# TITULUS XXIV.

## Quod vi aut clam.

Hoc nomine datur actio perſonalis omnibus illis, quorum intereſt, ad opus, in re ſoli, vi aut clam factum, reſtituendum ſive deſtruendum.

Cauſa efficiens Prætor: 1. pr. & delictum, [illegible] factum [illegible] Violentum, (quod fit contra denunciationem novi operis, &c. [illegible]) Clandeſtinum [illegible] in re ſoli [illegible] publici vel privati. [illegible] Datur illis quorum intereſt, colono, uſufructuario &c. [illegible] ſi ſc. per id opus datum ſit fructibus damnum: contra facientes, [illegible] vel mandantes, [illegible] & heredes quatenus aliquid ad eos pervenit. [illegible]

Tota res in priſtinum ſtatum reducenda, ſumptibus rei, [illegible] licet jus [illegible] qui actori etiam ad intereſſe tenetur [illegible] quod deficientibus aliis probationibus juramento in litem vel officio judicis æſtimatur.

Eliditur (1.) exceptione præſcriptionis annalis, [illegible] ex tempore operis perfecti, [illegible] niſi juſta fuerit ignorantiæ cauſa. [illegible] (2.) ſi factum ſit agri colendi cauſa. [illegible] (3.) ſi actor etiam aliquid vi aut clam contra fecerit, [illegible] (4.) ſi recuſaverit actor cautionem oblatam [illegible] (5.) ſi factum ſit incendii arcendi cauſa, modò incendium ad illum locum pervenerit. [illegible] Ante omnia Judex

[illegible]

## Notæ variorum.

[illegible]

# TITULUS XXV.

## De Remiſſionibus.

De his etiam adde, [illegible]

[illegible]

*Notæ variorum.*

[illegible]

# TITULUS XXVI.

## De precario.

*Junge L. 8. C. tit. 9.*

Precarium eſt actus [illegible] quo precibus petenti res utenda gratis conceditur, ita, ut quandocunque placuerit, [1] illa revocari poſſit. D
Non eſt contractus, [illegible]

Eſt vel ſimplex, quo uſus tantùm conceditur, hic petens eſt tantum in poſſeſſione; [illegible] vel non ſimplex, [4] quo præter uſum etiam poſſeſſio conceditur [illegible]

C Cauſa efficiens eſt voluntas ( utcunque declarata, [illegible] ad prolongationem & renovationem ſufficit præſumta ex patientia & uſu. [illegible] modò poſſit, ſi velit, revocare, [illegible] ) Concedentis. [illegible] & accipientis ( [illegible] qui Commodatum contrahere poſſunt [illegible] ) & rei traditio [illegible] licet per fictionem brevis manus [illegible]

O Objectum [illegible] ſunt omnes res, corporales & incorporales, [illegible] mobiles & immobiles [illegible] modò (1) ſint in commercio, (2.) uſu non conſumantur, (3.) Concedens in illis jus aliquod habeat. (4.) petentis non ſint propriæ pleno jure [illegible] commod. Forma eſt uſus ( [illegible] ) indeterminatus, ſc. modi, finis, temporis, &c. ita ut revocari poſſit pro lubitu concedentis [illegible] hanc pactum ejuſmodi adjectum vitiatur, non vitiat. [illegible] gratuitus. [illegible] de furt.

E Effectus ratione accipientis lucrativus, eſt (1) poteſtas utendi, [illegible] (2.) ſi hoc ſpecialiter rogatum ſit, poſſeſſio naturalis: ( alias enim eſt tantum in poſſeſſione [illegible] ) [illegible] quæ juſta eſt, quamdiu dominus eam non revocaverit: [illegible] prima revocatione fit injuſta [illegible] cujus intuitu petenti datur interdictum uti poſſidetis, [illegible] contra extraneum [illegible] Datur inde etiam interdictum recuperandæ poſſeſſionis, contra dominum, ſi petentem vi dejecit [illegible] A B

[illegible] eſt obligatio naturalis, [illegible] cujus intuitu prætor interdictum propoſuit, ex quo JCti poſt modum introduxerunt condictionem certi, ſive actionem

[illegible]

*præſcriptis verbis*, (13) non ordinariam, quæ ex contractu innominato oritur, ſed extraordinariam, *irregularem* (14) & anomalam. 2 § 2. 19. § 5.

* concedentis eſt, quod non amittat poſſeſſionem: ſive poſſeſſionem non petiere accipiens, 6 § 2 ſive petiere eam: tum enim, uti dictum, naturaliter *tantum* (15) poſſidet. 15 § 4. Bach. V. 2 D. 25 th. 4. V. Meyer C. l. A. 5. 55. &c.

Hoc interdictum eſt *reſtitutorium*, (16) 2. § 1 quo prætor rem precario conceſſam reſtitui jubet. Cauſa efficiens Prætor, 2. pr. propter 2. § 2. 15. pr. 14. & 15. § 3. Datur illi, qui precarium conceſſit, licet non ſit dominus. * 2 pr. 11 h. Succeſſores tam univerſales, 2. § 1. quam particulares patronis ſua precarium *prorogante*, quaſi novum conſtituunt, unde ex propria perſona hic agunt 2. § 2. contra precario habentem, & qui dolo deſiit, 2. § 2. 8. § 3 & contra heredes ex dolo defuncti, in quantum ad eos pervenit 8. § 5. Ad rem cum omni damno. 8. § 4. præſtatur hic dolus & *lata culpa*, (17) 8. § 3. poſt moram etiam caſus fortuitus, & fructus percepti. 8. § 4. Inſtitui poteſt, quandocunque concedenti libuerit 2. pr. § 2. l. 2. § 2. 12. pr. h. Judex (18) tamen ex æquitate *aliquod tempus* indulgere ſolet. 4. 17. § 3. commod. c. un. x. eodem. Bach. a. 1. D. 14. th. 1. lit. C. Lage D. 3. fol. 4. n. 15. de l. & l. Affinia ſunt Donatio (19) 1. § 1. 3. § 3. Commodatum 1. § 3. h. Precaria. Juris Canonici de quibus tit. x. de precariis del Brunnem. & ſeqq. tractat. Blumblacher. Solvitur (1.) morte accipientis, (20) 12. § 1. c. 3. x. h. (2.) revocatione, (21) 1. pr. (3.) in caſu L. 6. § 5. L. 11. h. ſolutione debiti. (4.) Conſolidatione (22) arg. 4. § 3. non etiam *tempore adjecto*, (23) 4. § 5. h. pactum, quo certum tempus determinatur, non vitiat, ſed vitiatur. (24) 12. pr. de alienatione rei precario accepti 4. 1 § 2. h. (25)

## Notæ variorum.

Precarium à commodato differt. (1) [*Quandocunque placuerit*] Hinc differt à Commodato, quod commodans quidem etiam [illegible] ſed [illegible] ad quam res commodata, [illegible]. Quando [illegible] ordinarium, ſed extraordinarium & [illegible], quæ ex æquo & bono [illegible] [illegible] [illegible]. Cum accipiens ad eam reddendam ſit obſtrictus, [illegible] precarium [illegible] [illegible]. Illud certum, quod de ſola [illegible] [illegible] ſit, [illegible] eſt à [illegible] de [illegible] præſcriptis verbis irregularis, quæ rei precario datæ repetendæ [illegible].

Precarium ſub [illegible] (2) [*Contractus*] [illegible] [illegible] ſit ad [illegible] [illegible] poteſt, quæ ex [illegible] Commodatum [illegible] in l. 3. ff. [illegible] ab quam differunt [illegible] [illegible] Contractus ſed [illegible] præſtatur [illegible] culpa. Bergh. Ad Obil. l. 23. d. R. I. [illegible] & precarium. [illegible] Precarium [illegible] [illegible] præſtatur dolo & culpa [illegible] Ad Obil. l. 8. § 3. [illegible] [illegible]. [illegible] Precarium cum commodato [illegible] non ſimpliciter, ſed ſecundum quid, [illegible] [illegible] [illegible] [illegible] ſed [illegible] Ad Obil. l. 2. § 2. [illegible] ſed etiam præſcriptis verbis l. 19. § [illegible] præſcriptis verbis [illegible] [illegible] præſcriptis verbis [illegible] [illegible] [illegible], ſed [illegible] (8) [illegible] præſcriptis verbis [illegible]

(3) [*In poſſeſſione*] Aliud eſt eſſe in poſſeſſione, & aliud poſſidere. [illegible] cauſa, [illegible] cauſa in poſſeſſionem [illegible] ſit, & tunc in poſſeſſione eſt, [illegible] ſit, [illegible] l. 10. § 1. ff. [illegible] Bergh. — *Aliud eſt eſſe in poſſeſſione, aliud poſſidere.*

(4) [*Non ſimpliciter*] [illegible] [illegible] [illegible], [illegible] poſſidere l. 17. ff. h. Mantzger. — *Dominium precario conceſſi poteſt.*

(5) [*Rerum poſſeſſio*] [illegible] & dominium [illegible] poteſt, h. e. ut [illegible] [illegible] poſſeſſionem habeat. Bergh.

(6) [*Rerum manent*] V. gr. Si quis rem vendat, ſed [illegible] ad certum tempus [illegible]. Bergh.



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[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

Itaque hoc interdicto heres in ſolidum non conveniatur [illegible] ubi apparet, parem et pacto magis, quam mero precario obligari voluiſſe. *Conſ. Du. Stryk. de C. C. [illegible]* Munſon.

(20) [*Aliquod tempus*] Nam & in precario non plane intercepitivam ſi alien dominium [illegible] ſe revocationem, ne per hoc beneficium alter lædatur; Requiritur ergo ut quandocunque revocari poterit, niſi tamen major neceſſitas Domino precarium concedenti ſupervenerit. *Stryk.*

*Precarium non plane intercepitive revocandum.*

(21) [*Donatio*] Per repetitionem tamen rei dati à donatione diſtinguitur precarium. *Stryk.*

*Precarium à donatione diſtinguitur.*

(22) [*Precarius*] Eſt hæc conceſſio fundi Eccleſiaſtici, ut accipiens illo utatur ad dies vitæ, & poſt mortem eundem fundum cum alio eiusdem æſtimationis reſtituat. Nec debent tamen, hunc contractum inter privatos ſubſiſtere, ſi alter perfectum habeant rerum dominium, & non multum differt à contractu vitalitio, vid. *Mev.* [illegible] qu. 31. *Stryk.*

*Precario acceptum [illegible].*

(23) [*Atrapatus*] Quæſtio: *An precarium finiatur morte concedentis.* [illegible] *& ad heredem ejus, qui conceſſit, tranſit.* Ad Obſ. [illegible] *precario rogans morte ejus, qui* [illegible] [illegible] loquitur non de communi & ordinaria precarii natura ſed de vi clauſulæ inſertæ, quæ ad [illegible] quæ adjectio requirit naſtrum voluntatem continuo durantem, quæ morte abrumpitur. [illegible] *Berger.*

*Precarium non finitur morte concedentis.*

(24) [*Reversatum*] *Diſſolvitur revocatione concedentis quandocunque* [illegible] modo non ſit intempeſtiva de qua Judex arbitrabitur, [illegible] licet precarium hoc de facto *ad certum tempus conceſſum ſit.* Illud poſtrem tamen verum eſt *l. 12. ff. [illegible] de precar.* [illegible] *l. 27. C. de Teſtam.* [illegible] niſi poſtea etiam voluntas revocandi à precario declarata ſit *conſ. Stryk.* [illegible] *Munſon.*

(25) [*In caſu l. 6.*] Si ſe debitor rem creditori oppigneratam ab eodem precario rogaverit, tunc ſi ſolverit debitum, evaneſcit precarium, cum pignore ſolvatur. *Stryk.*

(26) *Conſolidationem*] Si precarius poſſeſſor rem emerit. *Stryk.*

(27) [*Tempore adjecto*] Niſi poſt tempus elapſum acceſſerit revocatio, alias enim tamdiu durat, quamdiu concedens patitur. *Stryk.*

(28) [*Sed tenetur*] Ita quidem communiter volunt. Sed dicerem, ſi non expreſſit hoc aſtum, ut maneat precarium, illud in commodatum degenerare. Præſertim, ſi adjicitur poſtea de non revocando, vid. *Brunn. ad l. 12. ff. [illegible]*

(29) [*Vid.* [illegible]] Agitur ibi de conditione rei precariæ, quod ſi emtor paſſus ſit, me uti re precaria aliquamdiu, interdicto mihi poſſe contra me. Licet enim novi operis nunciatio ad heredes non tranſeat, aliud tamen eſt in precario favore libertatis, vid. *Brunnem. ad l.* [illegible]

# TITULUS XXVII.

## De arboribus cædendis.

A Hic duo dantur [1] Interdicta * (1.) de arboribus in prædium urbanum impendentibus, quod eſt prohibitorium, quo prætor prohibet vim fieri vicino cædenti arbores, *v. 1. §. 1.* in ſuas ædes impendentes, quas illorum dominus *monitus tollere* [2] noluit. *1. pr. §. 1.* Datur domino etiam partiario, *1. §. 5.* & D

uſufructuario. *1. §. 4.* * (2.) De arboribus e vicino fundo in prædium ruſticum impendentibus: quod à præcedenti non differt, niſi objecto, & quod hic tantum liceat ramos ad XV. pedes uſque à terra amputare, ne umbra arboris noceat alteri prædio: *§. 7.* &c. De arboribus his etiam competit actio ex LL. XII. tabb. *arguatoria*, [3] ſi ſc. arbor vicini vi venti inclinata ſit in meum fundum. *2.* S SS

### *Notæ variorum.*

(1) [*Hic duo dantur*] Interdictum *de arboribus cædendis, & glande legenda*, non verum & perpetuum, ſed ſolum exemplum interdicti *uti poſſidetis* eſt, quo quis in poſſeſſione certi alicuius juris ſe defendit. Cæterum cum ejusmodi jura ſint à conſuetudine regionis alicujus dependentia, adeoque non ubique communia, hinc nec interdicta illa magni uſus ſunt. *Dono*

(2) *Monitus tollere*] Optimum ergo eſt ut per judicem moneatur de amputandis ramis, aut ut patiatur hoc fieri per vicinum. *Stryk.* Hodie illud interdictum ne quidem apud Saxones alienum eſt, ſiquidem jus pinguius, quam quod datur L. [illegible] largitur, dum arborem radicitus evellere, & ligna ſibi habere, non ſolum

*Hoc interdictum non ſolum ramos amputare, ſed & radicitus evellere permittit.*

[illegible] *Philipp.* [illegible] 2. [illegible] 13. n. 2. [illegible] (3) [*Negotium*] [illegible]

# TITULUS XXVIII.

## De glande legenda.

D Hic prætor prohibet, ne domino fructus, qui in fundum vicini ceciderunt, legenti, etiam tertio die vis fiat, quod hodiè non *observatur.*[1] *Colr. p. 1. dec.* 25. *Harpspr. de act. ad h. t. Hahn. & Zas. h.*

### Notæ variorum.

[*Ad Rubric.*] Jus glandis legendæ [illegible] [illegible] sylvis dependet à jure venandi [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] *Brys.*

(1) [*Non observatur*] De jure Romano fructus [illegible] ramis arborum in fundum vicini decidentes [illegible] [illegible] [illegible] *Carpz. p.* 3. *c.* 35. *d.* 25. *Brys.* [illegible] [illegible] [illegible] *Carpz. p.* 3 *c.* 32. *d.* 25. *Colr. dec.* 25. [illegible] 16. *n.* 17 [illegible] [illegible] *Hah. h. t. Moneky.*

Jus glandis legendæ, dependet à jure venandi. [illegible]

# TITVLVS XXIX.

## De homine libero exhibendo.

*Junge l. 8. C. t. 8.*

D Hoc *interdictum*[1] est exhibitorium, quo prætor præcipit, ut liber homo, ff.
C qui *dolo malo detinetur*,[2] exhibeatur. Causa efficiens Prætor. 1. §. 1. de hominis liberi detentio dolosa, 1. *pr. l.* 2. *h.* sc. si quis detineat eum sciens, 3. §. 6. *arg.* 1. §. 2. *de dol.* 4. §. 1. (nam si ignoret aut dubitet, datur actio præjudicialis, 3. §. 7.) invitum, 1. §. 3. *de injur.* 3. §. 5. *h.* 4. §. 5. aut dolose persuasum, ut
S maneat &c sine justa causa. 3. §. 4. 3 §. 2. 3. *Datur omnibus*[3] ex populo, 3. §. 9. (ex pluribus actoribus eligit Prætor conjunctum vel digniorem: 3. §. 12.) non etiam personæ
P de calumnia vel collusione *suspectæ*[4] 3. §. 10. neque mulieri aut pupillo, nisi de con-
O junctis agant. 3. §. 11. Contra detentores, *ut in D.* etiam *absentes*[5] 3. §. 14. Ad exhibendum &c. *ut in D.* (si dubium sit de libertate, recurrendum ad actiones præju-
E diciales. 3. §. 7. 10. *f.*) *cujuscunque conditionis.*[6] 3. §. 1. exhibeatur, h. e. in publicum producatur, & videndi, tangendique ejus copia fiat, 3. §. 8. sine mora. *f.* §. 2. *h.* non
d. exhibens tenetur ad litis *æstimationem*,[7] idque sæpius, donec exhibeat. 3. §. 13. Hæc
SS actio est *perpetua.*[8] 3. §. *f.* *Concurrit* [illegible] hac actio ex L. Fab. de plagio.

### Notæ variorum.

(1) [*Hoc interdictum*] Videtur hoc etiam esse [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] *l.* 3. § 7. *h.* *Tamas.*

(2) [*Dolo malo detinetur*] [illegible] [illegible] [illegible] [illegible] [illegible] *Brys.*

(3) [*Datur omnibus*] Nemo enim prohibendus eſt libertati favere *l. 3. §. 9. h. Bergk.*

(4) [*Suſpecta*] Quia per talem actionem magis periclitaretur libertas, quia Calumniator veras probationes pro aſſerenda libertate retineret *Bergk.*

(5) [*Abſentes*] Qui ſi non defendantur, in bona illorum fit immiſſio *l. 3. h. Bergk.*

(6) [*Cujuſcunque conditionis*] Imo & cujuſcunque religionis, nam hominem religionis cauſa detinere, eſt à tempore otioſi alienum *Brunnem. ad l. 3. ff. h. t. n. 2. Bergk.*

(7) [*Æſtimationem*] Quæ deſumitur ab intereſſe actoris, quod ſc. opera & miniſterio ejus, qui detinetur, uti non poſſit. *Bergk.*

(8) [*Perpetua*] Quia libertati non præſcribitur. *Bergk.* Nec receſſit ab uſu, cum exemplo, quo commodæ perſonæ illo interdicto ſunt uſæ, declarat *Schulz. ff. Ex. 3. th. 23. Menckon.*

(9) [*Eſt perpetua*] Sed quo ſenſu? Num eo, quod toties agi queat, quoties homo liber detinetur? Verum ita omnes actiones perpetuæ ſunt, nam pro detentionem aliorum factam actio nondum eſt nata, hinc ei etiam præſcribi nequit. An eo, quod à tempore factæ detentionis, intra 30. annos, aut ſemper agi poſſit? hoc vero minus probabile eſt. Fac enim, me hominem liberum per 29. annos ut ſervum obtinuiſſe, tum ſane actioni poſſeſſoriæ locum habere non videtur, cum per tanti temporis lapſum libertas valde obſcura ſit reddita: nec obeſt, quod *libertas nunquam præſcribatur*, nam ex eo ſaltem ſequitur, quod actio ſuperſit, non autem, quod remedium poſſeſſorium. Ut ut igitur nolim uſum hujus interdicti præciſè anno coercere, non videtur tamen, illud etiam ad tam longum tempus extendi poſſe. Reſpiciendæ igitur erunt circumſtantiæ, & ſi poſt longi temporis lapſum libertas nihilominus liquida, ac detentionis injuſtitia evidens ſit, tum interdicto adhuc locus erit. *Titius.*

(10) [*Concurrit*] Ita ut uno remedio ſumto, altero agi poſſit. *Bergk.*

# TITULUS XXX.

## De liberis exhibendis, item ducendis.

### *Junge l. 8. C. tit. 8.*

A Hic duo dantur (1) interdicta, * exhibitorium, quo Prætor præcipit, ut patri exhibeantur liberi, in ejus poteſtate exiſtentes. Propter patriam poteſtatem & alterius retentionem. Datur patri, qui liberos habet in poteſtate, *1. §. 1. 4. h. t. n. 25. de ſtat. hom.* contra detinentes quosvis, licet *juſtam detentionis cauſam* (2) prætendant, *1. §. 2.* etiam matrem, (niſi ob *juſtiſſimas* (3) cauſas excipiat *1. §. 3. 3. §. 5.* quemadmodum etiam excipit *gener* (4) contra petitionem ſoceri: *1. §. f. h.*) modo detineat invitos. *f. h.* filius ſe in patria poteſtate eſſe negans tenetur actione præjudiciali, vel extraordinaria. *3. §. 3.* Ad liberos *ut ſubjecti 1. pr.* cujuſcunque ordinis & conditionis. *Perez. h. n. 1.* D C S P O D

2\. * (2.) prohibitorium, quo prætor prohibet, ne Patri liberos in ſua poteſtate exiſtentes ducenti vis fiat. Hoc à priori tantum fine differt: primum eſt hujus præparatorium, *3. §. 1. utilia hæc* (5) interdicta dantur etiam ad recipiendam uxorem, ſi invita ab alio teneatur. nam ſi ipſa conſentiat, *imploratur judex* (6) *Perez. h. num. 7.* Affinia ſunt (1.) utilis rei vindicatio. *1. §. 2. d. R. V.* (2.) Extraordinaria cognitio, *3. §. 3.* (3.) actiones præjudiciales. SS

### *Notæ variorum.*

(1) [*Hic duo dantur*] Hæc quoque exempla interdictis retinendæ poſſeſſionis eſſe adnecto, quibus jure patris poſſeſſio defenditur, hinc & *jus patrium & ejus evidentiæ* præſupponi debet, alias interdictum erit ſine effectu. Hodie nec tantus patriæ poteſtatis rigor eſt, nec hæc interdicta valde frequentia ſunt. *Titius.*

(2) [*Juſtam detentionis cauſam*] Quod ſi vero filius ob æs alienum alibi arreſto detineatur; an pater vi poteſtatis ad illum exhibendum poſſit agere? * Id diſtinguendum, an æs alienum fuerit neceſſarium, an contra *SCTUM Macedonianum* contractum. Priori caſu nego, poſteriori affirmo. *Bergk.*

* An pater poſſit agere ad exhibendum ſi filius ob æs alienum ſit arreſtatus?

(3) [*Juſtiſſimas*] V. gr. ſi mores mariti deperditi, & mater ejuſque liberos detineat, ut pa-

 ternis

... maritum [illegible]: Salva tamen de cætero patris manet poteſtas. Bergh.

Benè concordantia matrimonia jure patriæ poteſtatis non ſunt turbanda.

(4) [Gener] Si ſc. ſocer permutare nolit, ut filiam uxorem diverſam deducat. Ne benè concordantes matrimonia jure patriæ poteſtatis turbentur, nec patri accitè patriam poteſtatem exercere l. 1. §. 5. ff. h. t. [illegible] contra, ſi gener [illegible] hoc tradit, ex hoc interdicto uti [illegible] poteſt. Bergh.

(5) [Et in hoc] Idem ad Dominum & Adſcriptitios, Abbatem & Monachum applicat Bart. ad l. 2. ff. h. t. num. 7. Menochius.

(6) [Imploratur judex] Hodie Conſiſtorium. Ubi ſi maritus, præfectò maritum ſequi nolit, contra ipſam ut deſertricem procedi poteſt. Bergh.

# TITULUS XXXI.

## De utrubi.

D Hoc interdictum (1) eſt prohibitorum, quo Prætor prohibet, vim fieri rerum mobilium poſſeſſori: hinc datur actio realis mobilium poſſeſſori, adverſus quocunque modo turbantem ad poſſeſſionem rerum mobilium defendendam. Ab interdicto uti poſſidetis, differt *tantum objecto.* (2) *L. un. §. h. §. 4. I. de interdict.*

### Notæ variorum.

Interdictum utrubi, locum eſt ſi in poſſeſſione rerum mobilium turbemur.

(1) [*Hoc interdictum*] Rarius videtur accidere, ut in poſſeſſione rerum mobilium turbemur, [illegible] etiam interdictum Utrubi non adeo frequens eſt, ſi autem res noſtras alii teneant tum plerumque actiones petitoriæ ac ſatis expeditæ ex delicto vel contractu competunt, nec interdicta recuperandæ poſſeſſionis hic ſunt nota. Niſi fallor interdictum Utrubi videtur ſpectare, non ad eum modo caſum ubi, alter rerum mobilium poſſeſſionem invadit, ſed potius ubi libertati dominii, aut rerum ſuarum, moleſtus eſt, ut ſi ſervus fugerit & quo eum duci impediat *l. 1. h. t. Thomas.*

(2) [*Tantum objecto*] interdictum, cum uti poſſidetis de immobilibus, hoc autem de mobilibus loquatur. *Bergh.*

# TITULUS XXXII.

## De migrando.

D Hoc Interdictum (1) eſt prohibitorum, retinendæ poſſeſſionis, quo prætor prohibet vim fieri inquilino migranti, & res illatas, Locatori non oppignoratas,
C in alium locum transferenti. Cauſa efficiens Prætor 1. Datur etiam ſucceſ-
S ſoribus: *1. §. f. h.* & utile illi, qui gratuitam habet inhabitationem: *1. §. 1. ſ.* non etiam
P *colono* (2) *1. §. 1.* Contra locatorem, & ſucceſſorem; *ut in D. 1. §. f.* Ad res, *ut in D.*
O idem eſt, ſi pignoratæ quidem fuerint ab initio, *liberatæ* (3) tamen poſtea, aut ſi res aliena à conductore inferatur, *1. pr. L. 2.* aut ſi inquilini paratam ſolutionem locator *non accipiat.* (4) *1. pr.* actio exinde *eſt perpetua.* (5) *1. §. f.*

### Notæ variorum.

Interdictum de migrando.

(1) [*Hoc interdictum*] Aliud exemplum interdicti Utrubi, niſi me omnia fallunt, eſt interdictum de *Migrando*, cum enim locator conductoris libertatem quo ad res mobiles turbet, ideò contra hoc interdictum tuetur. Ob parentem rationis tamen etiam tribuitur colono, nam in *l. 1. §. 1. h.* non res, ſed rei nomen, more Romano ſolutum, negatur, quod interdictum hoc *perpetuum* dicatur *l. 1. § f. h.* id non alio ſenſu verum videtur quam eo, quem *arr.* 29. *h.* exhibent *Thomas*

(2) [*Colono*] Huic enim per implorationem officii judicis celerrimè ſuccurritur. *Brunn. ad Weſemb. h. t. qu. 4. Bergh.*

(3) [*Liberatæ*] Per oblationem poſſeſſionis. *Bergh.*

(4) [*Non accipiat*] Supponendum eſt in hoc interdicto, non tantum de poſſeſſione eſſe [illegible], ſed etiam aliud [illegible], ſaltem ad detentationem non competere locatum. *Bergh.*

(5) [*Eſt perpetua*] Affine huic interdicto eſt beneficium *emigrandi*, quod per inſtrumentum pacis conceſſum eſt illis qui propter *Religionem* diſcedere cupiunt ex Provincia, ne impediantur bona ſua vendere, & liberè diſcedere. *Bergh.*

Beneficium emigrandi.

# TITULUS XXXIII.
## De Salviano interdicto.

Hoc interdictum (1) est adipiscendæ possessionis, quo creditor (2) principaliter possessionem rei oppignoratæ persequitur. Hoc differt (3) ab actione Serviana & quasi Serviana, (1) quod hæc sit petitoria, illud possessorium; (2) quod in hoc interdicto sufficiat probari rem oppignoratam, tempore oppignorationis ab oppignorante *possessam* (4); (3) quod hoc regulariter adversus Tertium non competat. l. 1. C. *de precar.* Causa efficiens Prætor & Oppignoratio rerum (non *Jus pignoris*, (5) quod difficilius probatur) Datur directa, locatori prædii rustici contra Colonum, §. 3. I. *de interdict.* l. 1. h. tit., ejusque creditoribus hereditariis, l. 2. C. *de precar.* Contra debitorem, (6) non etiam contra tertium l. 1. C. *de precar.* [illegible]

### *Notæ variorum*

(1) [*Hoc interdictum*] [illegible]

(2) [*Creditor*] [illegible]

(3) [*Hoc differt*] [illegible]

(4) [*Possessam*] [illegible]

(5) [*Jus pignoris*] [illegible]

(6) [*Contra debitorem*] [illegible]

[illegible]

[illegible]

# LIBER XLIV.

## *TITULUS I.*

## De except. præſcr. & præjudiciis.

*Jung.* [illegible] *C* [illegible] *&* [illegible]

EXCEPTIO ſignificat vel * late omnem tam actoris, quam rei defenſionem: [illegible] * ſtrictè, defenſionem rei [illegible] Hinc eſt vel * *Infitiatio*, (Exceptio facti ſive intentionis,) qua actio actori competens *ſimpliciter negatur*, [illegible] ſive * ſimpliciter, e. g. ſi actori mutuum pe- A B

Kkkk kkkk 3

tenti

quod reus dicat: *vid. excep.* [1] * cum alternatione *novi facti* [2] quæ in ſicientio *pregnans* [3] dicitur. *vid. ſupr. de prob. O.*

* *Depulſio* [4] eſt cum reus non quidem actionem ſummo jure actori negat, ſed illam adverſus ſe iniquam eſſe dicit: *pr. I. h. vid. Vinn. ad rubr. I. h.* hæc in ſpecie dicitur exceptio & exceptio. Juris ſive actionis, *v. 2. h. 50. §. 1. de O. & A. 38. §. 1. de ſolut.*

D *PRÆSCRIPTIO* in genere hic idem ſignificat, quod depulſio *a. pr. de muſcell. 19. ff. L. p. & ſ. C. h. vid. Vinn. 2. 7. n. 26.*

D *PRÆJUDICIA* dicuntur illæ exceptiones, quibus actio intentata hac ratione excluditur, quod futuræ actioni majori præjudicium faciat. *Exempla ſunt* [5] in *L. 13. 16. 18. 19. 21. h. Vinn. 2. c. 7. n. 31.*

D Eſt igitur *EXCEPTIO* in ſpecie ita dicta, Jus reo competens, ad excludendum actoris intentionem, ſummo jure fundatam. *2. pr. h. 22. de excep. 2. pr. I. de replic. Vinn. 2. c. 7. n. 43. 44. Cauſa efficiens eſt æquitas* * Jure gentium *1. §. 1. L. 12. de dol. mal. exc. 14. de R. I. 27. de O. & A. quædam etiam Jure civili* * introductæ ſunt: ut SCt. Macedoniani, Vellejani, non numeratæ pecuniæ, ordinis, excuſſionis: *Vinn. 2. c. 7. n. 47.* Cauſa efficiens proxima eſt metus, dolus, error, &c.

C Dividuntur (1.) in * *NOMINATAS*, quibus in jure certum ac ſpeciale nomen eſt inditum e. g. pacti de non petendo, metus, doli, erroris, excuſſionis, diviſionis, &c.

c. & * *INNOMINATAS*, quæ certo nomine deſtituuntur, & dicuntur in jure *in factum* [6] *14. h. 2. §. 1. de dol. mal. 23. h.* has Prætor conceſſit ob defectum nominatarum, *21. de P. V. vid. omnino Vinn. 2. c. 7. num. 74.* (2.) in

D * *CIVILES*, *§. 7. I. de Excep.* quæ oriuntur ex Jure Civ. e. g. ordinis, diviſionis, SCt. Maced. Vellejan. &c.

d. Et * *PRÆTORIAS*, quæ ex Edicto Prætoris ortæ, ut pleræque aliæ, e. g. doli, metus, &c. *v. Vinn. 2. 7. n. 87.* (3.) in * *PERSONALES*, quæ *perſonam ſequuntur*, [7] *7. pr. h. 22. 23. ſol. matr. 24. 25. de re jud. 7. §. 8. L. 22. 25. §. 1. de pact.* * ex Legis diſpoſitione, ut exceptio *competentiæ*, [8] *12. 13. ſol. matr. 19. 21. de re jud.* ceſſionis bonorum: *§. ſ. I. de replic.* * Ex conventione partium, ut exceptio de non petendo à certa perſona: *7. §. 8. L. 22. 25. de pact.* hæc propter beneficium ordinis hodie etiam prodeſt *fidejuſſoribus.* [9]

E F f

* *REALES*, quæ *rem ſequuntur*, [10] & fidejuſſoribus, cuicunque, quorum intereſt, competunt, *7. §. 1.* etiam invito reo: *19. h.* ut exceptiones doli, metus, erroris &c. *7. §. 1.* non numeratæ pecuniæ. *10. C. de non num. pec.* SCt. Maced. *9. de SCt. Maced.* SCt. Vellej. *16. ad SCt. Vellej.* & regulariter omnes, quæ non excipiuntur Legis diſpoſitione vel exceptione partium. *19. h.*

e. G * *MIXTARUM* naturam habet exceptio reſtitutionis ex cauſa ætatis, [11] *1. de reſtit. in integr. penult. 13. de minor.* (4.) * *TEMPORALES*, quæ certo tempore extinguuntur, ut non numeratæ pecuniæ, pacti de non petendo intra certum tempus, &c.

H * *PERPETUAS* quæcunque *XXX.* [12] ann. præſcribuntur, ut ſunt omnes, quæ ſpecialiter non ſunt exceptæ.

(5) * *DILATORIAS* [13] ſive temporales, verzögliche Schutz-Reden, quæ actionem ad tempus certum excludunt ac differunt: *2. §. ſ. h. §. 10. I. h.* hic reus tantum petit abſolutionem ab inſtantia, von dieſem Gerichts Zwang. *Cr. 1. 4. 3. d. 16.*

I K L Et pertinent vel ad * proceſſum, ac reſpiciunt * perſonam * principalium * judicis, ut et * Juriſdictionis, ut (1.) Exceptio *INCOMPE-*

*TE-*

M PETENTIÆ, ſive præſcriptio vel exceptio fori: *ſ. C.* ſeu exceptio fori declinato-
N ria, *Vult.* [illegible] (2.) Exceptio *PRÆVENTIONIS*, qua declinamus ſe-
cum judicis alias competentis, ex hac ratione, quod ejus Jurisdictio ſe præventa
ab alio Judice: [illegible] *de judic.* *Vult.* [illegible] quod fit etiam per ſolam citatio-
nem. *d. L.* (3.) Exceptio *LITIS* pendentis, qua declinamus forum judicis compe-
tentis, eo, quod Lis coram alio judicio jam jam inchoata pendeat, [illegible]
[illegible] *de reb. cred.* ſc. per litis conteſtationem, [illegible] *de judic.* [illegible]
*ad* [illegible] *de judic.* [illegible] Hinc differentia præventionis & litis pendentia *eſt ſublata*,
[illegible] cum litis pendentia nunc etiam fiat per ſolam citationem, [illegible]
[illegible] *Carpz.* [illegible] *Reſp.* [illegible] *Gail.* [illegible] *O.* [illegible] modò ſit legitimè facta,
ſc. emiſſa & inſinuata [illegible] ſola libelli oblatio non ſufficit. [illegible] *Reſp.* [illegible]
niſi in Camera aut judicio Imperii judicem. *Carpz.* [illegible] *Reſp.* [illegible] *C.* [illegible]
[illegible] * perſonæ ejuſdem, quibus judex tanquam
inidoneus rejicitur ut ſunt Exceptio: * *SUSPICIONIS*, qua Judex tanquam ſuſpe-
ctus rejicitur, [illegible] *C. de judic.* ſive ordinarius, ſive delegatus [illegible] *de foro compet.*
[illegible] *de appell.* [illegible] *C. de judic.* [illegible] *Nov.* [illegible] *N.* [illegible]
[illegible] *de judic.* [illegible] non etiam totum collegium, & omnes aſſe-
ſſores, *Gail.* [illegible] *Obſ.* [illegible] niſi [illegible] de collegio ſint ſuſpecti, ex
ſuſpicionis cauſa probetur: [illegible] *de except.* [illegible] *Vult.* [illegible]
[illegible] De cauſis ſuſpicionis [illegible] *judex* [illegible] In genere judicem ſuſpectum faciunt,
quæ [illegible] *ad* [illegible] *Vult.* [illegible] *D.* [illegible]
[illegible] *ſupr. de teſt.* * *INHABILITATIS*, qua rejicitur is, qui
prohibetur [illegible] vel impeditur judicare. *vid. ſupra de judic.* * Actoris vel
rei, ſi ſc. perſonam ſtandi in judicio non habent. *vid. ſupr.* *d. a.*
* minus principalem, ut [illegible] advocatum, procuratorem, teſtes, L
&c. *de quibus* [illegible] *de procur.* [illegible] *&c.* * modum pro- K
cedendi, e. g. ratione citationis; exceptio termini anguſti, loci non tuti, non [illegible]
[illegible] feriarum &c. *de quibus* [illegible] Ratione libelli, *vid.* [illegible]
Ratione comparitionis opponitur exceptio contumaciæ, exceptio legitimi impedi-
menti, item exceptio præjudicialis [illegible] *de judic.* * Cauſæ meritis, ut
exceptio plus petitionis, [illegible] Pacti temporalis de non peten-
do, [illegible] Moratoria ſive [illegible] *Ex* [illegible] [illegible]
[illegible] *Carpz.* [illegible] Cedendarum actionum, Sub- & Obreptionis,
[illegible] Compenſationis, [illegible] *de qua* [illegible] *L.* [illegible] *C.* [illegible]
Et * *PEREMTORIAS*, quæ actionem in totum extinguunt [illegible] D
[illegible] *C. de* [illegible] Endliche oder aufleſchliche Ein-oder Schutz-Reden [illegible]
[illegible] hac probata, reus ab ipſa actione abſolvitur [illegible] quarum qui-
P dem oriuntur * ſimul cum ipſa actione, * ex negotii circumſtantiis, ut [1] exceptio
Q [illegible] *de qua* [illegible] [2] doli, *de qua* [illegible] [3] erroris, *de qua* [illegible] [4] non nume-
ratæ pecuniæ, *de qua* [illegible] [5] ex *L.* [illegible] quarum rerum actio non
q datur, * ex contrahentium qualitate, ut [1] Exceptio Sena-
tus Conſulti Maced. [2] SCt. Velle. [3] minorennitatis [4] [illegible]
p * ex poſt facto ex nova cauſa [1] except. [illegible] [2] rei ju-
dicatæ: [3] debiti pacto vel tranſactione remiſſi, vel ſoluti. [4] rei venditæ & tra-
ditæ, [illegible] *de qua ſupr.* [illegible] [5] rei ſuppoſitæ. [6] [illegible]
[7] doli, in [illegible] [illegible]

Ex.

Exceptio [illegible] de dubio nullius valoris eſt.

Exceptiones [illegible] ipſam actionem, ſed excludunt actionis [illegible] ſtricto jure fundatam: vid. ſupr. D. [illegible] de O. & A. [illegible] de ſol. [illegible] * (1) à [illegible] opponuntur, [illegible] in judicio, [illegible] de ferun. [illegible] C. de appell. (nam Judex eas ex officio [illegible] ſupplet, [illegible] Ca. [illegible] Reſp. [illegible] niſi (a) judicium reddant ipſo jure nullum: e. g. Si procurator non habeat mandatum [illegible] C. de procurat. aut (b) ex actis judicialibus appareat: e. g. Si actor eſſet [illegible] &c. Gail. [illegible] O. [illegible] (c) [illegible], nullam actori competere actionem Ca. [illegible]) quibuscunque verbis, & qualem * DILATORIÆ ante litem conteſtatam, [illegible] C. de judic. [illegible] C. h. [illegible] ff. de procurat. [illegible] C. de probat. [illegible] C. h. [illegible] de Judic. [illegible] Ca. [illegible] & advocatus pertinaciter eas urgens poſt litem conteſtatam, mulctatur [illegible] C. h. Interdum tamen neque ante litem conteſtatam opponi poſſunt: ut (1) ſi terminus à judice ad hoc praefixus elluxerit. [illegible] de temp. (2.) ſi illis expreſsè renunciatum [illegible] ff. de procurat. Vulteius [illegible] plura huc refert. Interdum etiam poſt litem conteſtatam opponuntur, ut (1) ſi poſt litem conteſtatam demum ſint ortae. arg. [illegible] de exceptione in fur. vid. Vulteius [illegible] Ca. [illegible] aut (2) reus juret ſe ignoraſſe eam ante litem conteſtatam [illegible] Ca. d. l. [illegible] de [illegible] (3) ſi reddat judicium ipſo jure nullum: [illegible] C. de procurat. Ca. d. l. Gail. [illegible] O. [illegible] (4.) ſi habeat gravamen inevitabile, ut loci non tuti, non honeſti, anguſti temporis, &c. [illegible] de appell. Ca. d. l. [illegible] O. [illegible] Gail. [illegible] O. [illegible] (5) ſi tertius poſt litem conteſtatam ſuperveniat. [illegible] Interdum etiam poſt ſententiam; ut (1) ſi ſententia nulla ſit propter judicis incompetentiam. [illegible] C. ſi a non comp. jud. (2.) Exceptio Excommunicationis, [illegible] de except. [illegible] (3.) exceptio compenſationis [illegible] ff. de re jud. (4.) cedendarum actionum [illegible] de fidej. (5) pretii non ſoluti: [illegible] de A. E. V. Gail. [illegible] O. [illegible] (6.) falſi procuratoris [illegible] C. de procur. (7) Rei venditae non traditae, [illegible] Gail. [illegible] O. [illegible] Vult. [illegible]

* PEREMTORIÆ * conteſtantur in judicium * ſtricti juris ſtatim ab initio [illegible] in jure [illegible] C. h. [illegible] C. de [illegible] temp. praeſc. [illegible] de V. O. (Obſ. [illegible] C. [illegible]) Vinn. ad § [illegible] * bonae fidei pro lubitu: nam etiam ex [illegible] hic opponuntur [illegible] ff. de her. pet. [illegible] de reſc. vend. [illegible] de leg. [illegible]

* tractantur uſque ad ſententiam [illegible] C. h.

La. Hodie conteſtatio neceſſaria non eſt, ſed indifferenter [illegible] opponuntur, [illegible] C. de praeſcr. long. temp. antea oppoſitae rejiciuntur poſt litem conteſtatam. Interdum tamen etiam ante litem conteſtatam opponuntur (ut exceptiones [illegible], e. g. rei judicatae, jurisjurandi, tranſactionis [illegible] de lit. conteſt. [illegible]) modo in continenti [illegible] probentur: alias enim rejiciuntur poſt litem conteſtatam: Ca. [illegible] hoc reſpondetur, daß Beklagter auf erhabene Klage ſich einzulaſſen / und litem zu conteſtiren nicht ſchuldig ſeye [illegible] Ca. [illegible] quod hodie ad omnes peremtorias extenſum eſt, [illegible] Weſenb. [illegible] Vult. [illegible] Carpz. [illegible] Interdum etiam poſt ſententiam opponuntur: ut (1.) In ſecunda inſtantia opponuntur omiſſa in prima, [illegible] C. ſent. reſcind. non poſſ. [illegible] C. h. (2.) ſi reſtitutio in integrum locum habeat: [illegible] (3.) ſi non ſententiae, ſed executioni opponantur: [illegible] refert [illegible] & Carpz. [illegible] (4.) SCti Maced. & Velley. ex ſingulari privilegio [illegible] de SCt. Maced. (5.) quae judicium ipſo nullum reddunt. (6.) [illegible] ob [illegible] dum

tum jure conceſſa: *1. C. de jur. & fact. ignor.* vid. plura apud *Rodoch. pract. civ. 1. 44. n. 15. &c. Carocciu de remediis contra ſent.*

Pluribus exceptionibus poteſt uti reus ad eliſendam unam actionem, *43. de R. I. 5. h. licet diverſis,* [12] *8.* (niſi Lex prohibeat: *43. pr. de R. I. n. N. 19.* [13] *1. 5. & Auth. contra qui C. de non num. pec. v. Farb. V. 5. D. 26. th. 7. A.*) etiam ſucceſſivè de Jur. Civil. & Can. *c. 4. x. de except.* In Camera autem omnes ſimul & uno termino proponere debet. *Ord. Cam. p. 3. tit. 20.* §. Und ſollen. *Carpz. 1. c. 3. d. 15.*

E. * (2.) *legitime probentur* [14] *19. pr. de probat. 1. h. 9. C. h.* & quidem (1.) ſi reus intentionem actoris *confiteatur,* [15] & exceptionem poſtea opponat, ſtatim: *9. C.* (2.) ſi reus intentionem actoris neget, & exceptionem conditionaliter adjiciat, tum actor prius probet intentionem, deinde reus ſuam exceptionem. *9. C. h. verb. nam ſi &c.* (3.) Si reus intentionem actoris neque neget, neque affirmet, ſed ſimpliciter opponat exceptionem, e. g. Ille jam tuum conſecutus eſt, ſolvi debitum, remiſſum eſt, &c. tum itidem actor prius debet ſuam intentionem probare, *9. ff. 9. in f. C. h. c. 63. de R. I. in 6. vid. 24. de prob. 19. pr. de R. C. 58. fam. ercisc. Fr. 2. reſol. 19.* (*Diſſ. Donellus*) Deinde reus probat ſuam exceptionem *d. LL. Fr. 2. Reſ. 20.* (*Obſ. Aut.* [16] *et quae ſeni d. C. de probat.*) modo reſpiciant cauſæ merita (nam proceſſum ſpectantia ſtatim probentur) & contineant non ſolum negationem intentionis actoris; ſed & facti alicujus affirmationem *vid. Fr. 2. reſol. 20.* Probentur dilatoriæ *ante litis conteſtationem.* [17] *9. & ſ. C. h. vid. Umm. D. 8.*

*Replicatio* [18] eſt jus actori ad excludendas rei exceptiones ſummo jure fundatum, competens. D

Duplicatio eſt jus reo ad excludendas replicationes ſummo jure fundatas, competens. In Camera in dilatoriis ultra duplicam, in peremptoriis ultra triplicam partes procedere *non poſſunt.* [19] *Ord. Cam. p. 3. t. 20.* §. Wo aber. *& t. 29.* §. Wo aber. Judex tamen ex *arbitrio* [20] ulteriores proceſſus admittit. *Ord. Cam. p. 3. tit. 19. v. Carpz. 1. c. 1. d. 7.* D

## Notæ variorum.

Exceptio ſine [illegible] probari [illegible] debeat.

Exceptio [illegible]

(1) [*Replicatio*] In hac materia [illegible] [illegible] Exceptiones [illegible] Replicationes [illegible] [illegible] Exceptio [illegible] actoris [illegible] Exceptiones facti [illegible] Exceptiones [illegible] *Exceptiones juris* [illegible] [illegible] Exceptiones [illegible] [illegible] Exceptiones [illegible]

[illegible]

[illegible]

(2) [illegible]

(3) [illegible]

(4) [illegible]

(5) [illegible]

(6) [illegible]

(7) [illegible]

8. [illegible]

(9) [illegible]

(10) [illegible]

(11) [illegible]

[illegible]

(24 [illegible]

(25 [illegible]

(26 [illegible]

(27 [illegible]

(28 [illegible]

(29 [illegible]

(30 [illegible]

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(35 [illegible]

(36 [illegible]

(37 [illegible]

(38 [illegible]

(39 [illegible]

(40 [illegible]

(41 [illegible]

[illegible]

[illegible]

[illegible] (vel expreſsè, vel tacitè) conteſtata, et Exceptionem Peremptoriam [illegible] [illegible] Exceptionem [illegible] [illegible] Vel [illegible] Vel [illegible] Tiraq.

(61) [Confirmatur] [illegible]

(62) [Obſt. Actori] Non videtur [illegible] [illegible] Vel [illegible]

(63) [Ante litem conteſtatam] [illegible] l. 19. C. de probat. Bergr.

(64) [Replicatione] In definitione Replicationis [illegible] [illegible]

(65) [Non poſſunt] [illegible] Bergr.

(66) [Ex arbitrio] [illegible] In Secunda Triplica [illegible] Bergr.

# TITULUS II.

## De exceptione rei judicatæ.

D Hæc eſt exceptio reo, in judicio abſoluto, contra priorem actorem, & ejus ſucceſſores, de eadem re, ex eadem cauſa denuò agentes, competens. Da-

C tur ex (1.) ſententia judicis (nam hæc ſolam actionem non tollit, 60. de condict. indeb. § 5. I. de except.) æqua vel iniqua, [illegible] 50. de re jud. 4. h. modò

S non ſit ipſo jure nulla, [a] 21. §. h. ſ. 1. C. quib. res jud. non noc. 2. C. de procur. (2.) abſolutoria 18. [b] quæ tranſiit in rem judicatam, non etiam appellatione ſuſpenſa eſt. Item [c] &c. ac in D. & qui pro hoc ſunt ſurrogati: 21. C. de [illegible] item omnibus ſucceſſoribus, 9. §. 1. ſingularibus &c. 11. §. 1. licet prior cauſa per procuratorem &c. acta ſit, 11. §. 7. Contra actorem priorem, (licet egerit per procuratorem 11. §. 7. modo non fuerit falſus procurator: 11. §. 1. h. 1. C. quib. res jud. non noc.) & ſucceſſores omnes:

O 11. h. 3. §. 1. de pign. Non etiam contra tertium: [d] 3. 17. 1. h. 63. de re jud. [Ad eludendam actio-

[illegible] de eadem re, [illegible] licet quantitate vel qualitate mutata, [illegible] ( non etiam de diverſa re, [illegible] poſſeſſio, nunc proprietas, [illegible] ) [illegible] opponitur [illegible] poſt litem [illegible] conteſtatam (tanquam peremtoria) [illegible] Vid. praced. [illegible]

## Notæ variorum.

[illegible]

# TITULUS III.

## De diverſis tempor. præſcription. & acceſſionibus poſſeſſionum.

*Junge L. 7. C. tit. 33.*

Exceptio, quæ hic conceditur, eſt [illegible]. [illegible] quæ datur ad [illegible] præſcriptam, de facto intentatam, excludendam. *Non eſt exceptio* [illegible] [illegible] ſed exceptio facti. *Vid.* [illegible]



Con-

Causa efficiens est * *Lapſus temporis*, ** lege definiti: Nam præſcribuntur A
tur actiones * civiles * regulariter *XXX. annis* * ſive ſint [illegible], ** ſive perſonales: B
*[illegible] C. de præſcr. 30. vel 40. ann.* ( [illegible] ) [illegible] C
*Fr. Ex. 12. [illegible] Berl. [illegible] concl. 62. n. 43.*

* [illegible] autem ſpatio * breviari, ut unius anni [illegible] vendi- c
tio ſervi, qui [illegible] [illegible] eſt. *N. [illegible]* actio ex L. Jul. repetundarum con- D
tra heredes, [illegible] Quinquennii, querela inofficioſi teſtamenti, [illegible] *C. de*
*inoff. [illegible]* inofficioſæ donationis, [illegible] *C. de inoff. donat. aliud exemplum* [illegible] eſt in *L. [illegible] C.*
*[illegible]* * longiori, ſc. XL. annis, omnes actio- d
nes, quæ alias præſcriberentur 30. ann. [illegible] *[illegible]* [illegible] *C. de*
*ann. except.* [illegible] 10. annis conditio illa, qua, quod alea perditum eſt, repetitur *[illegible] C.*
*de aleat.* [illegible] * Prætoriæ * pœnales regulariter * [illegible] po- the
[illegible] anno [illegible] ( [illegible] ) excipe tamen E
actionem furti manifeſti, quæ perpetua eſt: [illegible] *Theoph. in paraph.*
*[illegible] & DD. [illegible] alia exempla* [illegible] ſunt in *L.* [illegible]
[illegible] * rei perſecutoriæ ſunt perpetuæ [illegible] e
[illegible] de O. & A. [illegible] Publiciana [illegible] in rem [illegible] de O. & A. de conſtituta pecunia: In-
ſtitoria, exercitoria &c. [illegible] (1.) Reſciſſoria, ( nam hæc tantum intra annum
competit. [illegible] de O. & A. [illegible] quæ negotium Jure civili validum reſcindit [illegible] (2.)
Redhibitoria, quæ interdum [illegible] interdum VI. menſibus præſcribitur [illegible]
[illegible] de ædil. edict. (3.) Reſciſſoria in ſpecie ſic dicta, qua uſucapio impleta
propter abſentiam reſcinditur: veteri jure anno, novo quadriennio præſcribitur
[illegible] (4.) Actio doli [illegible]
[illegible] (5.) Æſtimatoria ſive quanti minoris ex Ædilitio Edicto com-
petens interdum *VI menſibus* [illegible] interdum anno [illegible] præſcribitur [illegible] *de ædil.*
(6.) actio hypothecaria quæ XL. annis præſcribitur, ſi debitor vel ejus heredes
poſſideant rem hypothecariam, ſi tamen tertius aliquis poſſideat, tum præſcribitur
*XXX annis* [illegible] *C. de [illegible] ann. præſcr.* [illegible] *C. de ann. exc.* (7.) Quæ ex Edi-
cto veniunt, [illegible] quam illarum ſingulas Prætor in ſpecie conceſſit,
[illegible] *de [illegible] jud. [illegible] cauſa* [illegible] *Barb. de act.* [illegible]

* Criminales accuſationes præſcribuntur regulariter *annis XX* [illegible] h
*C. de falſ.* [illegible] quandoque autem ſpatio * breviori, ut ſtuprum quinquennio [illegible] f
[illegible] *ad L. Jul. de adult.* [illegible] *Theod.* [illegible]
[illegible] niſi vis publica acceſſerit [illegible] *de adult.* [illegible] ſi vero ſtuprum
[illegible] [illegible] Adulterium, quoad pro-
ſecutionem privilegiatam [illegible] patris & mariti [illegible] diebus utilibus, [illegible]
[illegible] *de adult.* quoad accuſationem extraneo concedendam menſibus
*VI. utilibus.* [illegible] *ad L. Jul. de adult.* [illegible] quoad omnium
omnino criminalem accuſationem V annis, quæ ſola hodie obſervatur [illegible] *C. de adult.*
*Treutl. V. 2. D.* [illegible] *Tabor.* [illegible]
[illegible] computatur hic tempus ab admiſſo aſtu [illegible] *Caſtro*, [illegible]
ſi vero concurrat violentia, [illegible] *de adult.* vel inceſtus, [illegible] *de adult.* tum de-
mum XX annis præſcribitur [illegible] *Berl.* [illegible] *concl.* [illegible] & tempus
hoc eſt continuum, [illegible] ac curſum [illegible] *de adult.* [illegible]
[illegible] *de prob. concl.* [illegible] *L.* [illegible] *de adult.* Hoc quin-
quennio etiam præſcribuntur aliæ accuſationes ex L. Julia [illegible] *de adult.* Idem eſt
in

in peculium, & ſi extantur contra SCtum Silanianum tabulas aperuerit. [illegible] 13. ad SCtum Silan. [illegible] ſunt. [illegible] quæ perpetuò vindicantur. [illegible] C. ad L. Corn. de falſ. ut ſunt Apoſtaſia. [illegible] C. de Ap. [illegible] de [illegible] def. [illegible] Suppoſitio partus, 10. §. 1. ad L. Corn. de falſ. Parricidii, 13. ad SCt. Silan. Læſæ Majeſtatis, Hæreticos, Aſſaſinos, Falſæ monetæ, Simoniæ, Concuſſionis, Abortus, & [illegible], [illegible] Carpz. [illegible] D. [illegible] Bona fides [illegible] Jure civ. hic neceſſaria non eſt, [illegible] enim mala fide poſſidet, [illegible] 1. §. 1. C. de ann. præſcr. [illegible] C. de præſc. 30. vel 40. ann. Ca. [illegible] Gobbard. de [illegible] requiritur autem Jure Can. c. 15. [illegible] de præſcr. & noſtris moribus. [illegible] Ca. [illegible] §§. (Def. Colër ad cap. [illegible] de præſcript. [illegible] Carbon. [illegible]) Actor debet adverſarii malam fidem probare. [illegible] Ca. [illegible]

Datur omnibus, contra quos actio præſcripta intentatur. Contra omnes [illegible] quorum actiones præſcriptione jam ſunt extinctæ. Ad excludendas actiones præſcriptas de facto intentatas: nam præſcriptione hac ipſa actio perimitur, ſive ab initio ſemper habuerit certum tempus præfinitum, [illegible] §. [illegible] de [illegible] §. 1. de poſt. ſive novo jure 30. vel 40. annis præſcribantur. [illegible] §. 1. de ann. except. [illegible] C. de præſcr. 30. vel 40. ann. (def. [illegible] §. 1. de O. & A.) [illegible] Carb. [illegible] Ca. [illegible]

Poteſt ante & poſt Litem conteſtatam opponi, ſi illicò poſſit probari: Omiſſam judex ex officio ſupplet, ſi ex libello appareat. [illegible] Ca. [illegible]

Excludunt hanc exceptionem impedimentum juris: e. g. quod agere non poſſit filiusfamil. contra patrem [illegible] de judic. [illegible] §. [illegible] C. de ann. exc. non etiam impedimentum facti (cum enim reſtitutio locum habet [illegible] ex quib. cauſ. non niſi hoſtilitas, bellum. [illegible] de præſc. Ca. [illegible] §. [illegible] de anno 1654. §. So viel nun [illegible] Capitalia, &c.

## Notæ variorum.

(1) [illegible]

(2) [illegible]

Vel [illegible]

(3) [illegible]

(4) [illegible]

(5) [illegible]

(6) [illegible]

(7) [illegible]

(8) [illegible]

(9) [illegible]

(10) [illegible]

(11) [illegible]

(12) [illegible]

(13) [illegible]

[illegible]

(14) [illegible]

(15) [illegible]

(16) [illegible]

(17) [illegible]

(18) [illegible]

(19) [illegible]

(20) [illegible]

(21) [illegible]

(22) [illegible]

(23) [illegible]

(24) [illegible]

(25) [illegible]

[illegible]

[illegible]

[illegible]

# *TITULUS IV.*

## De doli mali & metus exceptione.

DOLI *exceptio* (a) quæ ex dolo oritur, & propter dolum datur, * Generalis eſt, quæ datur ad excludendam actionem ſummo jure competentem, contra æquitatem a ſciente in judicium deductam. [illegible] *de V.O.* Datur omnibus, à quibus aliquid *contra naturalem æquitatem* (b) petitur, & ſucceſſoribus omnibus [illegible] Contra omnes, qui ſcienter aliquid contra naturalem æquitatem petunt, [illegible] licet ab initio bonâ f. contraxerint, [illegible] *de adim. & transf. leg.* [illegible] *de R. I. exempla ſunt in L. 3* (c) *C. de non. num. pec.* [illegible] *de V.O.* Concurrit cum omnibus aliis exceptionibus, quæ, ut æquitate (d) oriuntur.

* Specialis eſt,

eſt, quæ propter dolum admiſſum in ipſo negotio, ex quo adverſarii actio deſcendit, competit. Cauſa efficiens Prætor. 1. §. 1 delictum, ſc. dolus malus, 2. §. 2 non etiam lata culpa, 2. *pr.* in ipſo negotio ab initio admiſſus, qui tamen negotium non reddit ipſo jure *nullum* [1] *36. d. V. O.* §. 1. *I. de except.* 7 *pr.* h. 7 *pr. de dolo.* 2. *pr.* h. Datur omnibus dicto dolo deceptis, ſucceſſoribus & fidejuſſoribus, & *quorum intereſt*, [6] 7 §. 1. *de exc.* 2 §. 2. h. Contra illum, qui dictum dolum *admiſit*, [7] 2. §. 1 & ſucceſſores ex cauſa lucrativa, 4. §. 21. non etiam ex cauſa onerosa, 4. §. 27. niſi ſucceſſor anteceſſoris ſui *acceſſionem* [8] velit, 4. §. 27. nec contra parentes atque patronos. nam facti infamiam continet, ſed datur liberis, &c. exceptio in factum, detracta doli mentione. 4. §. 16. Non excluditur, *replicatione* [9] doli. 4. §. 13. C

*Exceptio METUS* [10] eſt exceptio contra actionem ex coacto negotio deſcendentem. Cauſa efficiens eſt juſtus metus. *vid. ſupr. ad tit. quod metus cauſa.* Datur omnibus metu coactis, & heredibus & quorum intereſt: 1. §. 1. *de exc.* 4. §. 33. h. Contra omnes qui ... coacto negotio agunt (ſive ipſi metum admiſerint, ſive alii: nam ratione ſubjecti eſt *in rem ſcripta* [11] 4. §. 33.) etiam parentes. nam poteſt metus *ab alio* [12] cauſatus eſſe, *arg.* 4. §. 16. h. *Vult.* 2. *c.* 7. *n.* 102. *Obſ.* 4. §. *ſ.* h. D C S P C

Eliditur *replicatione metus.* [13] 12. §. 1. *quod metus cauſa.*

## *Notæ variorum.*

(1) [*Doli Exceptio*] [illegible]

(2) [*Contra naturalem æquitatem*] [illegible]

(3) [*Exemplo ſunt in l.* 3.] [illegible]

(4) [*Ex æquitate*] [illegible]

(5) [*Mediam*] [illegible]

(6) [*Quorum intereſt*] [illegible]

(7) [*Admiſit*] [illegible]

(8) [*Acceſſionem*] [illegible]

(9) [*Replicatione*] [illegible]

[illegible]

(10) [illegible]

(11) [illegible]

(12) [illegible]

(13) [illegible]

# TITULUS V.

## Quarum rerum actio non datur.

D Hic datur Exceptio * jurisjurandi, quæ datur illi, qui adverſario *extra judi-* A
*cium* [1] deferente juravit, ſe nihil dare oportere. Cauſa efficiens eſt Jus-
jurandum litis deciſorium voluntarium, quod à parte patri extra judicium
*deſfertur.* [2] *vid. ſupra de jur. am. volunt. ad tit. de jurejur.*

D * *libertatis* [3] onerandæ, cauſa, quæ datur liberto contra pa- 6.
tronum ad excludendum illud, quod patronus onerandæ libertatis cauſa à liberti-
D no ſtipulatus eſt. v. 1. §. 5. & 7. h. L. 5. §. 5. * quæ in odium *aleatorum* [4] introdu- 2.
cta eſt, & competit colluſori, de eo, quod in alea venditum eſt. *Ch.* [illegible] [5] 1. § 1.

Non

## *Notæ variorum.*

[*Ad Rubr.*] In hoc tit. fundata eſt Exceptio non competentis actionis, vel potius actionis prohibitæ. *Bergk.* Prima Exceptio quæ hic commemoratur, eſt juris naturalis, oritur enim ex pacto liberatorio, ſub conditione jurisjurandi initio. Secunda & tertia eſt ex lege civili, quæ actionem aliàs validam improbat, adeoque facultatem contra illam excipiendi largitur, id tamen ſemper naturale eſt, ut ex jure illo competente excipere poſſis. Quo autem in hoc titulo *Exceptionem non competentis actionis* fundari arbitrantur, illi neque falluntur, illa enim locutione non peculiaris exceptio, ſed cujusvis exceptionis peremtoriæ vis & effectus indicatur, niſi igitur ſpecialis exceptio ſimul allegetur, illa locutio eſt inanis, & prudens actor reum ea exceptione ad reprobationem exceptionum admittere non tenetur, cum in rei veritate, nulla ſit ſuo tempore producta, adeoque nulla reprobatio locum habere queat, ut periculoſa ſit cautela, quando nonnulli eludendæ actionis actoris cuſtivis, generalem actionis non competentis Exceptionem opponunt, ut ubi ad Reprobationem perventum eſt, ſpeciales demum producti ac probari ſuadent, nam in peremtoria eadem renunciari poteſt, vid. *Ord. Proc. Sax. tit.* 21. §. 4. *Bergers diſſ. de exc. obſcr. habit. Wittenberg.* 1696. *Titius.*

(1) [*Extra judicium*] Nam ſi in judicio deferatur, tunc actio jam mota eſt, & ſic opus eſt ſententia poſt juramentum judiciale. *Bergk.*

(2) [*Defertur*] Et ſuſcipitur, adeoque quandam conventionem placuit litigantibus remitti actionem. Idem obtinet, ſi jurare-dum ab actore remiſſum fuerit, quia habetur ac ſi præſtitum eſſet, *l.* 9. §. 1. *ff. de jurejur. Bergk.* Jurisjurando remiſſum, habetur pro præſtito.

(3) [*Libertatis*] V. gr. ſi quis ſervum hac conditione manumiſerit, ut ſi ſingulis diebus aut operas non præſtiterit, mox redigatur in ſervitutem, hac oneratur libertas, quia in conditione mortis vivet. *Bergk.*

(4) [*Aleatorum*] In *Aleatorum* honorario ludo perdita non ſolvit. Immò ipſe collutor de luſu convenire nec reſpondere, nec judex ſuper eo cognoſcere cogitur. *Carpz. Prax. Crim. P.* 3. *qu.* 134. *num.* 9. 23. 24. 25 & 26. *Bergk.*

(5) [*Ex evictione*] Habetque locum, ſi quis in alium rem vendiderit, ut traderet, poſtea ſi ea ab emtore evincatur, & hic agat de evictione, tibi obſtabit Exceptio hæc qua illa imputare debet, quod talem rem emerit. *Bergk.*

# *TITULUS VI.*

# De Litigioſis.

## *Junge l.* 8. *C.* 1. 37.

D Litigioſum eſt (1) res in judicium deducta: ſic ratione actoris actio eſt litigioſa, (2) ratione rei verò ipſa res. *l.* §. 1. *ff. l.* 4. *C.* Requiritur igitur (1.) Lis [quæ incipit à Litis conteſtatione, *c. 32. x. de. V. S. L.* 5. *pr. de her. pet. l.* 2. & 4. *C. h.* nam tum demum litigioſa fit *actio. *dd. LL.* etiam poſt *Nov.* 112. *C.* 1. *Lis* C *ex ſe vadit,* (3) *dd. LL.* (*Diſſ. Piſtor.* 1. *q.* 40. *n.* 2. *Perez in C. h. n.* 5. *Fr.* 1. *reſ.* 11. *n.* 7.) A

* res, quæ petitur: *etiam poſt N.* 112. *c.* 1. & *Aut.* a.

*litigioſa, C. h. Umm. de proceſſ. D.* 5. *th.* 75. (*diſſ. DD* §§.) (2.) *De dominio,* (4) *N.* 112. *c.* 1. *Aut. litigioſa, C. h. Cz.* 2. *c.* 32. *de* 22. *Piſtor.* 1. *q.* 40. *n.* 7. *Fr.* 1. *Reſ.* 11. *n.* 29. &c. (ſive directa ut rei vindicatio, ſive utilis, ſive ex verò, ſive ex quaſi dominio lis mota, e. g. Publiciana: *Cz.* 1. *c.* 32. *d.* 22. *Fr.* 1. *Reſ.* 11. *n.* 10. idem eſt, ſi agatur hereditatis petitione, familiæ erciſcundæ, *15. fam. erc.* communi divid. *Fr.* 1. *Reſ.* 11. *n.* 32. non etiam ſufficiunt *aliæ actiones* (5) reales, perſonales, aut in *rem ſcriptæ.* (6) *Cz.* 1. *c.* 32. *d.* 22. *Piſtor.* 1. *q.* 40. *n.* 7. *Fr.* 1. *Reſ.* 11. *num.* 20. (*obſt. l.* (7) 4. *C.*) (3.) Rei, quam reus poſſidet. *l.* §. 1. (4. Coram judice competente (non etiam arbitro: *c.* 3. *x. ut lit. pend.*) Non (5.) calumnioſè mota: quod in dubio non præſumitur *Fr.* 1 *Reſ.* 1. *n.* 25. Vitium litigioſi reſpicit tantum *litigantes,* (8) non etiam *tertium poſſeſſorem.* (9) *l.* §. 1.

Res ita litigioſa cedi vel *alienari* (10) non poteſt (niſi (1.) detur *in dotem.* (11) *ſ.* §. 2. *in ſ. C.* (2.) ex cauſa donationis propter nupt. *ſ.* §. 1. (3.) ex cauſa tranſactionis *l. ſ.* §. 4.

§. 1. C. (4.) diviſionis rerum hereditariarum, l. 3. C. (5.) ex cauſa pretii edendi neceſſaria: 13. fam. herc. vid. plur. Fr. 1. Reſ. 11.) l. & 1. ff. & C. h. Alioquin alienatio non eſt ipſo jure nulla (2) de jure ff. 12. de R. J. L. 1. §. 5. quæ res pign. obl. Habet h. novo autem jure, ipſo jure nulla eſt; 2. 4. C. Fr. 1. Reſ. 11. Emtor rem ſtatim reſtituat licet ignoraverit (3) litigioſam eſſe, l. pr. C. & licet proceſſus contra venditorem dirigatur. Fr. 1. Reſ. 11. qui ſi agat rei litigioſæ nomine, repellitur exceptione rei litigioſæ: Quoad pœnam (4) diſtingue: (1.) ſi venditor & emtor ſciverunt eſſe litigioſam, tum amiſſo pretio (5) emtor rem reſtituat, pretium autem cum altero tanto venditor de ſuo tenetur fiſco ſolvere. l. pr. C. h. (2.) ſi ſolus venditor ſcivit, tum ſimpli pretii quantitatem fiſco præſtet, pretium cum tertia parte ejuſdem pretii de ſuo reſtituat emtori, qui rem tantum reddit. l. §. 1. (3.) ſi ſolus emtor ſcivit, amittit pretium, quod fiſco cedit: 4. pr. C. (4.) ſi uterque ignoravit, neuter punitur, ſed rem ſimpliciter reſtituunt.

Deſinit eſſe res litigioſa, modis, quibus lis perimitur. (1) Sententia judicis, (2.) Litigantium facto, ſi e. g. tranſactum de lite, aut lis pacto, vel alia conventione remiſſa: (3.) Præſcriptione ſc. lapſu temporis, (6) 13. §. 1. C. de judic. quod ultimum non obſervatur. (7)

## Notæ variorum

(1) [Litigioſam] [illegible]

(2) [illegible]

(3) [illegible]

(4) [De dominio] [illegible]

(2) [Alias eſt litigioſa] [illegible]

[illegible] (5) [illegible] (6) [illegible] (7) [illegible] (8) [illegible] (9) [illegible] (10) [illegible] (11) [illegible] (12) [illegible]

[illegible] (13) [illegible] (14) [illegible] (15) [illegible] (16) [illegible] (17) [illegible]

# TITULUS VII.

## De obligationibus & actionibus.

*Junge L. 4. C. tit. 10.*

OBLIGATIO hic eſt *juris vinculum*, [1] quo quis ad aliquid præſtandum adſtringitur, *&c.* Cauſa efficiens eſt Jus, quod perſonam adſtringit, &c. *Subjectum ſunt* [1] creditores & debitores. Ratione objecti. *Vid. tit. de paſtis.* Perſonam adſtringunt, non tamen Jus in re transferunt, [2] *p. b.* [illegible] *de paſt.*

 Eſt

Eſt (1.) ratione CAUSÆ efficientis * ſimplex, * NATURALIS, quæ eſt vinculum Juris naturalis, quo quis citra Juris civilis autoritatem ad aliquid *præſtandum* * adſtringitur : [illegible] *de O. & A.* [illegible] eſt q., iterum * imperfecta, ſive minus plena, ubi obligatio quidem eſt in nobis aliqua, ſed tertio ad certum quid a nobis invitis exigendum Jus non eſt quæſitum : [illegible] exemplo [illegible] ſunt in *L.* [illegible] [illegible] *Thalm.* [illegible] hæc in jure *effectum* [illegible], [illegible] nec intelligitur nomine naturalis obligationis : [illegible] *de condict. indeb.* [illegible] *de ſol.* [illegible] *de O. & A.* * Perfecta & plena eſt vinculum Juris naturalis, quo quis *ex naturali* [illegible] obligatione ad aliquid præſtandum adſtringitur, & tertio etiam jus ad certum aliquid ab invito exigendum, Jure Gentium conceditur [illegible] *de pact.* [illegible] *de conſt. pec.* [illegible] *C. de* [illegible] *Tabor* [illegible] e. g. quæ oritur ex nudo pacto. [illegible] *de ſolut.* *Diſſ. Camerar.* hæc obligatio actionem quidem J. civ. non producit, [illegible] *de pact.* alios tamen effectus de J. civ. habet * principales, ut retentionem, [illegible] *de condict. indeb.* compenſationem [illegible] *de comp.* * acceſſorios [illegible] ut pignoris conſtitutionem, [illegible] *de pign.* [illegible] O. fidejuſſoris acceſſionem, [illegible] *de fidej.* conſtitutum, [illegible] *de conſt. pec.* novationem, [illegible] & propter hunc Jus civ. quandoque [illegible] Nil. dat actionem. [illegible]

* CIVILIS [illegible] eſt vinculum juris civilis, quo quis citra æquitatis naturalis rationem ad aliquid præſtandum adſtringitur : [illegible] *L.* [illegible] *de V. O.* [illegible] *de dol. mal.* [illegible] *de conſt. pec.* [illegible] *de ſolut.* [illegible] (*Diſſ. Lauter.* [illegible]) eſtque talis * ſtatim ab initio, ut quæ deſcendit ex negotio *doloſo*, [illegible] coacto, vel ex errore aut ſpe futuræ ſolutionis inito [illegible] *de V. O.* [illegible]

* [illegible] poſt facto ſive obligatione mixta vinculum æquitatis tollitur : quod ſit [illegible] *de ſolut.* juramento voluntario delatione & præſtatione : nam hæc pactum tacitum continent, (*Diſſ.* [illegible] *D.* [illegible]) Actionem quidem producit, ſed inefficacem, [illegible] *de V. O.* [illegible] & poteſt huic obligationi accedere *fidejuſſor* [illegible] *C. de non num. pecun.* (*Diſſ. DD.*) ex hac cauſa tamen ſolutum *poteſt repeti* [illegible] *de condict. indeb.* non etiam compenſationem inducit, [illegible] *de compenſ.* neque conſtitui poteſt, [illegible] *de conſt. pec.* [illegible] *de condict. indeb.* [illegible] *de conſt. pec.* * MIXTA eſt vinculum æquitatis naturalis & civilis, quo quis ad aliquid præſtandum adſtringitur (hæc ſimpliciter dicitur civilis [illegible] *de pact.*) Eſtque * (1.) * verè talis, ubi duo hæc vincula evidenter concurrunt, quod fit in veris contractibus, e. gr. mutuo, commodato, &c. * præſumtione talis, in qua vinculum naturale exiſtere ſuppetur vel præſumitur, e. gr. quæ deſcendit ex re *judicata*, [illegible] *de R. I.* [illegible] aut ex Jurejurando ex confeſſione *in jure facta*, [illegible] *de conf.* Producit efficacem actionem, niſi hunc effectum ejuſmodi obligationi ſpecialiter ademerit Jus Civ. quod fit in SCto Maced. [illegible] *SC. Maced.*

* (2.) Civilis, quæ deſcendit [illegible] ex Jure Civili, Prætoria, quæ à Prætore introducta, [illegible] *de Oblig.* [illegible]

* (3.) immediata, quæ deſcendit *ex ſimplici* [illegible] *LL.* præcepto, ſine ullo hominis facto, [illegible] e. g. qua pater obligatur ad alimenta, [illegible] dotem, &c. [illegible] *de R. N.* [illegible] *LL. C.* [illegible] *C.* [illegible]

* mediata eſt, quæ mediante facto aliquo humano conſtituitur, (regula-

gulariter proprio, *3. in f. C. ut act. pro mor.* minus principaliter verò etiam alieno, ut filiifam. ſerv. quadruped.) quod ſi abſolutum eſt, dicitur actus; *19. de V. S.* Si obligatorium, tum vel eſt *pollicitatio,* [21] vel conventio, vel debitum, *v. Fr. ad T. ad exhib. num. 7.*

I (II.) Ratione *OBJECTI* eſt vel * rei, qua obligamur ad rem præſtandam in †
L ſpecie: *75. §. f. de V. O.* * facti, qua poſſimum ad factum obligamur: liberamur tamen præſtatione *intereſſe.* [22] *13. in f. de re jud. 72. 112. de V. O. v. 14. 84. de V. O.*

*ACTIO* (1.) latiſſimè eſt Jus, illud quod debetur, publica auctoritate perſequendi, *L. un. C. quando civ. act. crim.* (2.) latè, eſt jus publica auctoritate perſequendi, quod ſibi debetur. *v. 178. §. 2. de V. S. 1. §. 1. de contrar. tut. 34. de V. S. 37. de O. & A.* (3.) ſtrictè, eſt Jus perſequendi in judicio, quod ſibi debetur. *v. 25. pr. 51. de O. & A.* (4.) ſtrictiſſimè ſignificat actionem *perſonalem* [23] *28. h. 178. §. 2. de V. S. vid. Vinn. ad pr. I. h. n. 4.* hic accipitur in *latiore ſignificatione,* [24] *pr. I. de act. junct. §. 1. eodem.* H

K *Inventa jure gentium.* [25] (*Obſ. 2.* [26] *§. 6. de O. J. Heum.*) *Bach. de act. D. 1. th. 12.* informatæ Jur. Civili. Cauſa efficiens proxima eſt Jus perſonarum & rerum: hocque vel in re, vel ad rem. C

Dividuntur (I.) ratione *CAUSÆ efficientis * remota* [27] * (α.) in * civiles, §. 3. †
*I. de act. 25. §. f. de O. & A.* quæ ex civilibus cauſis, ex parte jur. civilis deſcendunt, D
*§. 3. 4. I. de act. 10. §. 2. de nov. act.* (item dicuntur directæ. *dd. LL.*)

* prætoriæ: quæ ex Edi- D
cto Prætoris originem habent: *§. 3. I. v. 25. §. f. de O. & A. §. 7. I. de J. N. G. & C.* hæ *utiles dicuntur.* [28] *16. §. f. de pign. act. 1. §. 4. de ſuperfic. Bach. de act. D. 2. th. 18.*

D * (β.) in * directas, *37. de O. & A. 47. §. 1. de N. G. §. f. I. ad L. Aquil.* quæ ex LL. verbis ſunt:

D * utiles, quæ deſcendunt ex ſententia LL. per interpretationem: *vid. L. 1. pr. 22. de pign. 5. §. pen. de conſt. pec. 70. de R. V. v. penult. pr. de inſt. act. vid. omninò* [29] *47. §. 1. de N. G.* I.

D * in factum actiones, quæ deficientibus verbis & ſententia Legis ex æquitate in ſubſidium dantur. *§. f. ad L. Aquil. 11. de P. V. exempla ſunt* [30] *in L. 23 §. 5. L.* I.

D *52. de R. V §. f. ad L. Aquil.* * *proxima* [31] (α.) in * præjudiciales, quæ de ſtatu competunt. (*vid. 16.* [32] *de exc. 1. §. 1. famil. erc. un. C. quand. civ. act crim.*) *v. 7. §. f. L. un. de liberal. cauſ. tit. de agnoſc. & al. lib. v. 37. de O. & A.* (*Diſſ. Valt. Jur. Rom. lib. 2. c. 5. Rittner. dec. 15.*) *v. Bach. V. 2. D. 20. th. 4. ne. A. & de act. D. 2. th. 19. §. 13 I. de act.* K. M

Et * quæ deſcendunt ex jure rerum, ac ſunt vel * Simplices m.

D * Reales, quæ deſcendunt ex Jure in re, & quæ adverſus poſſeſſorem Juris, quod in re habemus, *declaratorium petimus* [33] hic rem ſequuntur. *19. de jur. fiſc. 7. de publican. 2. C. ſi unus ex pluribus hered.* dicuntur vindicationes, *25. pr.* petitiones, *28. h. 178 §. 2. de V. S.* ut ſunt R. V. hypothecaria, interdicta, retin. poſſeſſ. &c. N O

D * Perſonales, quæ ex obligatione deſcendunt, *§. 1. I. de act. v. 7. C. ſi cert. pet. 19. C. de O & A.* adverſus tertium poſſeſſorem non dantur, *dd. LL.* niſi ſint in rem ſcriptæ, quæ hoc à realibus *mutuantur* [34] *e. gr.* actio *quod metus cauſa.* [35] *vid. tit. quod* o.

D *metus cauſ. D.* Dicuntur etiam condictiones, (*§. 14. I. de act.*) *25. pr.* * Mixtæ, quæ oriuntur partim ex Jure in re: partim ex Jure ad rem. *22. §. 4. famil. herc. 3 & communi divid. 1. famil. herc. 4. pr. fin. regund. 25. §. 18. ſ. 7. C. de hered. pet. §. 20. I. de act. Fr. Ex. 13. q. 3. Bach. de act. D. 2. th. 3.* th.

*(A)

D * (β.) in * Naturas, [38] v. Barb. D. 2. th. 18. de act. quæ præcedentem ſufficientem habent materiam, ex qua deſcendunt, ut ſunt actiones ex contractibus ortæ.

D * Dativas, præcedentem cauſam ſufficientem non habent, ſed ex æquitate a Lege [39] dantur e. gr. contra pupillum ex Edicto D. Pii quatenus abſque tutore locupletior factus. 5. de aut. tut. v. Barb. de act. D. 2. th. 18. in f. Hahn. h. n. 2.

D * (γ.) actiones ex contractibus dyplevris ortæ, ſunt vel * directæ, quæ ex contractibus dyplevris ex una parte ſtatim ab initio directe deſcendunt:

D * Contrariæ, quæ ex altera parte ex poſt facto per conſequentiam, [40] quaſi per indirectum deſcendunt v. g. Si commodatarius expenſas fecerit. vid. Vinn. ad §. 2. I. quib. mod. re contrahitur obl. n. 2.

(II.) Ratione SUBJECTI * (α) * in ſimplices, ubi unus actor, alter reus eſt: D

* duplices, in quibus uterque actor & reus eſt: e. g. judicia diviſoria, 10. fin. reg. 44. §. 4. fam. herc. 2. §. 1. comm. divid. 37. §. 1. h. item interdicta uti poſſidetis: utrubi, de ſuperfic. &c. præterea tamen, qui prior ad judicem provoca-

P vit, aut quem ſors elegit [41] 13. 14. de judic. v. 37 §. 1. h. * (β.) in * tranſito-

Q rias in heredes * actiones, quales ſunt regulariter omnes, 59. de V. S. 62. de R. I. 57. de A. v. O. H. pro portione hereditaria, [42] 1 C. fam. herc. etiam pœnales ex delicto [43] venientes: 1. §. 1. de privat. delict. §. 1. I. de perpet. & temp. act. e g. 4. §. f. de alien. jud. mut. 16. §. 2. quod metus cauſa. 13. de dolo malo. 23. §. 8. ad L. Aquil. 21 §. 4. rerum amot. 1. §. 1. de priv. delict. 27. de furt. 2. §. f. vi bon. rapt. 32 ad L. Falcid. modò non tendant (1.) ad Jus aliquod perſonale. [44] f pr. C. de uſufr. (2.) ad meram vindictam, [45] (ut actio injuriarum, actio quæ datur ex Edicto de in jus vocando. 24. de in jus voc. actio ad revocandam donationem. 1. 7. C. de revoc. donat. plura ſunt in L. 4. de calumn. 9. in f. de religioſ.) niſi jam ſit lis conteſtata. [46] 1. §. 1. de priv. delict. 32. ad L. Falcid. 13. pr. 13 §. 1. 4. 28. de injur.

Q. R. * rei, quales ſunt perſonales ex * conventione: 12. 40. arg. 35. §. 1. C. de donat. 1. §. 2. C. de conſt. pec. licet (1.) nulla heredum mentio facta, 38. 56. §. 1. de V. O. (2.) dolus defuncti [47] intervenerit, 12. 40. h. 7 §. 1. depoſ. §. 2. 157 de R. I. (3.) illis competant ad pœnam conventionalem, nam hæc conventione inveſta [48] exigitur. 49. de act. emt. modò non * ſit pœnalis propter dolum in negotio admiſſum, & tendat principaliter [49] ad dolum puniendum: arg. 7. §. 1. depoſ. § 1 I de perpet. & temp. act.

neque * ſpecialiter excipiatur, ut actio Tributoria [50] 7. §. f. 8. de tribut. act. vid. etiam 9 §. 1 quod falſ. tut. 3. § 9. ſi menſ. falſ. mod. Barb. de act. D. 3. th. 4. Vinn. ad §. 1. I. de perpet. & temp. act. num. 7.

S. * ex delicto, quatenus ſc. ad heredem aliquid pervenit, L. un. C. ex delict. def. 44. de R. I. aut ſi (2.) Lis cum defuncto ſit conteſtata, [51] 13. 28. de injur. 26. 58. h. 139. de R. I. aut (3.) pœna ipſo jure impoſita [52] ſic. Gail. 2. de P. P. c. 3 n. 5 * non tranſitorias in heredes * actiones, ut modo dictum

T. inter tranſitorias, &c. * rei, ut ſunt actiones * reales, quæ non dantur contra heredes, quâ tales, ſed quâ poſſeſſores. [53] 42. de R. V. arg. 19 de pet. her. 2. C. ſi unus ex plur. hered. * perſonales * in rem ſcriptæ: 16. §. f. quod metus cauſa Si tamen defunctus poſſeſſor dolo rem deſiit poſſidere, tum datur contra heredem actio in factum, [54] in quantum locupletior factus eſt,

* ex * conventione. de his vide in tranſitoriis. * ex delicto, quibus ſunt regulariter omnes [55] 1. § 1. de priv. delict. 4. §. f. de alien. jud. mut. 1. §. f. de priv. delict. un. C. de pœn. 22. de neg. geſt. mixtæ. etiam mixtæ, [56] 1. §. 1. de perpet. & temp.

*temp. act.* 11. *de R. J.* 23. §. 8. *ad L. Aquil.* 19. *de pecu. conſt.* 2. §. *f. vi bon. rapt.* & rei perſecutoriæ ex delicto, 1. §. 2. *de priv. delict.* 4. §. *f. de alienat. jud. mut. cauſa. junct.* 7. *eodem. L. un. C. ex delict. defunct. f. C. rerum amot. junct.* 21. §. 6. *eodem.* 3. *pr. vi bon. rapt.* 44. *de R. J. Bach. de act. D.* 2. *th.* 21. Singulare eſt *in condictione fur.* [illegible], quæ propter *delictum* [illegible] NB. datur in ceterum furum, §. 14. *I. de act. f. inſtr.* quemadmodum *com. Bach.* d. *l. th.* 21. Exceptiones vid. ſupr. *inter tranſeundum.*

(III.) Ab *OBJECTO* * (α.) in * univerſales, quibus de rerum univerſitate agitur, 1. *de R. V.* e. *gr.* hered. pet.
* generales, quibus non de tota univerſitate, ſed de diverſis tantum ſpeciebus agitur: 56. *pro ſoc.* ut actio tutelæ, pro ſocio negotiorum geſtorum.
* ſpeciales, ſive particulares quibus de re ſingulari agitur: 56. *pro ſoc.* 1. *de N. G.* ut rei vindicatio actio depoſiti.
* (β.) * in petitorias [illegible] quibus principaliter agimus *de proprietate* [illegible] vel *fundi jure* [illegible]
* poſſeſſorias, quibus principaliter agimus de poſſeſſione, 14. §. *f. de exc. rei jud. vid. Tit. de interdict.* 1. 14 *f.* * *Utpote quæ tamen*, [illegible] §. 10. *I. de act. L.* 35. *h.* in * rei perſecutorias, quibus aliquid petitur, principaliter, propter patrimonium, ut ſc. illud augeatur, vel non diminuatur: 35. *h.* ut ſunt omnes reales, §. 17. *I. de act.* & quæ deſcendunt ex conventione (nam in his etiam pœna conventionalis habet ſe ut intereſſe *f. de præter ſtipul.* §. *f. de V. O.* excipe depoſitum miſerabile, ob quod poſt infitiationem eſt *mixta pœnalis*, [illegible] 1. §. 4. *&c.* 17. *depoſ.*) & quædam ex delicto, ut *rerum amotarum*, [illegible] 21. §. 5. *de act. rerum amot.* de alienatione jud. mut. cauſa. 4. §. 6. *de alien. jud. mut.* actio quod metus cauſa, quæ poſt contumaciam demum fit pœnalis mixta, 14. §. 2. *quod metus cauſa.*

* *pœnales*, [illegible] quibus pœna propter delictum infligenda exigitur, *de quibus ad L.* 47. 48. pœna propriè dicitur, quod principaliter exigitur *ad corrigendum* [illegible] reum, impropriè etiam quandoque intereſſe, 9. *L. f. junct.* 6. §. 4. *de* [illegible]. *per quem fall.*
* *mixtæ ſunt*, [illegible] quibus partim res, partim pœna exigitur: ut actio quod metus cauſa, actio vi bonor. rapt. Leg. Aquil. &c. §. 19. *I. de act.*
* objecti quantitate in Actiones in * ſimplum, quibus ſimplum perſequimur, tales ſunt rei perſecutoriæ,
* duplum, quibus duplum perſequimur, quod interdum eſt mera pœna, ut in actione furti non manifeſti, de tigno juncto, contra m. f. poſſeſſorem: 23. §. 8 *de R. V.* Interdum rem & pœnam continet, ut actio de ſervo corrupto, Leg. Aquil. contra infitiantem, item actio depoſiti miſerabilis contra infitiantem, &c. ſuntque hæ tales vel * *ſua natura*, [illegible] ut actio furti non manifeſti, de tigno juncto &c.
* vel per accidens propter infitiationem ut depoſ. miſerab. Leg. Aquil. Legatum ad pias cauſas, &c.
* triplum, quibus *triplum* [illegible] petitur, §. 24. *I. de act.*
* quadruplum [illegible] quibus quadruplum petitur, quod interdum * etiam rem continet, ut in actione, quod metus cauſa, de calumn. vi bonorum raptorum:
* eſt mera pœna: ut in actione furti manifeſti, *& interdum* [illegible] de calumniatoribus: & competunt hæ in quadruplum vel * ſua natura, ut actio furti manifeſti, vi bonorum raptorum: * per accidens, ſc. *contumaciam* [illegible] ut actio quod metus cauſa.

(IV.) Actiones ex conventione deſcendentes *SUBDIVIDUNTUR* §. 28. *I. de act.* 5. *pr.* & §. *fin. de* [illegible] *lit. jur.* (*Diſſ. Rhamn. de action. Diſp.* 2. *th.* 5.) *Bach. de act. Diſp.* 6. *th.* 1. & *V.* 1. *D.* 10. *th.* 2. *Fr. Ex.* 13. *q.* 17. a *QUALITATE* * in *bonæ fidei*, [illegible]

 in

in quibus Judex liberum habet poteſtatem, quod alterum alteri ex bono & æquo præſtare oporteat judicandi, §. 30. I. de act. hic Judex non eſt adſtrictus ad naturam negotii, vel verba contrahentium: 7. de N G. 24. dep. 31. §. 20. de Ædil. edict. Ex contractibus b. f. oriuntur actiones b. f. & contra: §. un. I. de obl. ex conſ. 2. §. ſ. h. & ex omnibus obligationibus mutuis (72) deſcendit actio b. f. Franck, Vinn. Bach. hæc autem propoſitio ſimpliciter non eſt convertibilis: nam ſunt etiam negotia μονόπλευρα, & actiones inde orientes, b. f. ut æſtimatoria, (73) ex ſtipulatu ad dotem repetendam. (74) Earum ſpecies (75) omnes continentur in §. 28. I. de act. ſive expreſſè, ſive implicitè, nam ſub illis continentur utiles, & quæ ab illis tantum differunt adjecta qualitate. (76) 3. §. 7. 38. pr. de peculi. * ſtricti juris, (77) in quibus judicis poteſtas ad naturam negotiorum & partium conventionem adſtricta eſt. (78) 99. de V. O. penult. 9. de R. Cr.

Arbitrariæ (79) ſunt, in quibus Judex ex æquo & bono, quid præſtandum ſit, judicare poteſt, propter præcedens ejus arbitrium, vel loci adjectionem §. 31. Inſt. de act. Effectu ferè conveniunt cum actionibus b. f. (80) Huc etiam pertinent quædam perſonales ex delicto (81) ut in L. 14. §. 4. quod met. cauſa 18. pr. de dolo malo. §. 31. I. de act. & actiones reales. (82) 68. de R. V. vid. tit. de eo quod certo loc.

(V.) A FINE in * præparatorias, quibus aliis majoribus via ſternitur, * directas, 3. §. 13. L. 17. ad exhib. ſive principales, quæ præparatorias ſequuntur. 8. 1. §. ſ. de aq. & aq. pluv. 36. de R. V. 31. de A. vel A. P.

(VI.) Ab adjuncto TEMPORE in perpetuas & temporales, de quo ſupra.

(VII.) Ab effectu in ſolidum, (83) & non ſolidum, quæ explicatur in §. 38. (84) I. de act.

## Notæ variorum.

Ex negotio Legibus reprobato, nulla naſcitur obligatio.

(1) [Juris vinculum] Ergo ſi negotium à lege reprobatum, nulla inde naſcitur obligatio. Sive quocunque pacto jus reſiſtit, [illegible] confirmatum, aliud non producit juris vinculum arg. l. Non dubium 5. C. d. L L. Bergh.

(2) [Subjectum ſunt] Sed hi tamen debent ſupponi, nam obligatio per univerſam jurisprudentiam diffunditur, adeoque jure perſonarum, quod vocatur, nec non jure rerum etiam reſpondet, amplius circa crimina & pœnas eadem quoque occurrit, quibus reſpectibus varium evolvuntur, & definitio prout communiter ſumi ſolent, locum non habent. Titius.

Per obligationem non transferimus jus in re.

(3) [Transferunt] Niſi accidentaliter tradatur. L. traditionibus 20. C. de pact. Loquutio eſt in ſolo pacto hyperbolica, quod rem efficit. Sed non vi pacti verum vi adſiſtentis Prætoris. Bergh. Hæc omnium locutio videtur prævaricatam ex jure Romanorum haurire, & ſatis ambigua eſt, verum ſic explicari debet, obligatio & jus ad rem, quæ ex ſolo ſpeciali [illegible], efficiunt ſaltem certam perſonam, non vero rem ipſam noſtram faciunt, ut omnia quæ iſta effectum habent. Titius.

(4) [aliquid præſtandum] Nam promiſſa ſunt ſervanda ex æquitate l. 1. ff. de pact. unde & ſolo æquitatis vinculo hæc obligatio ſuſtinetur dicitur in l. 95. § 4. ff. de ſol. Bergh. Hanc definitionem ex ſequenti fundamento profluere [illegible] natura & jus Civile Romanorum interdum ſibi mutuo adſiſtunt, interdum verò alterum ab altero recedit. Priori caſu DD. vocant obligationem mixtam, ex qua & actio & exceptio cum effectu [illegible] opponi poteſt, v. g. ut quæ ex emto, locato, commodato, &c. obligatio. Poſteriori caſu ſubdiſtinguendum eſt. Aut ſcil. jus naturæ deficit jus Civile Romanorum aut deficitur ab illo. Priori caſu vocatur obligatio Civilis, id eſt, ex mero jure civili proveniens, v. g. ex ſtipulatione coacta, aut ex promiſſione dolo alterius extorta in contractibus ſtricti juris, &c. & hæc nec actionem efficacem producit, (Præter enim quod ex tali obligatione [illegible] exceptionem ſuppeditat, quæ [illegible] actio inficiatur [illegible], v. ſupr. tit. de exceptionibus doli 3.) nec exceptionem, quia & ad retentionem rei ex tali obligatione acceptæ neminem [illegible]. Poſteriori dicitur ubi quævis naturalis, quæ hunc effectum habet ut exceptionem producat, v. g. obligatio ex nudo pacto, &c. v. Lauterbach. h. t. Reliquum tamen [illegible] ex nudo pacto actio conceditur, nunc obligationem

Obligatio naturalis ſola æquitatis vinculo ſuſtinetur.

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible] Quod si [illegible]

[illegible]

[illegible]

[illegible]

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(39) [illegible]

(40) [illegible]

(41) [illegible]

(42) [illegible]

(43) [illegible]

(44) [illegible]

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(48) [illegible]

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(55) [illegible]

(56) [illegible]

(57) [illegible]

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[illegible]

(58) [illegible]

(59) [illegible]

(60) [illegible]

(61) [illegible]

(62) [illegible]

(63) [illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible] Quod [illegible]. [illegible] Quod [illegible]

[illegible]

[illegible]

[illegible]

[illegible]

(11) *DD.* tribuunt omnibus *Doctoribus* & *Scholaribus*. Sed *Berlichius* 2. *concluſ. practic. n.* 52. *ſeqq.* ad ſolos *Doctores juris* id pertinere ait, ſcil. ſi iidem ſint Advocati. Rectius de jure noſtro reſtringas ad Advocatos per *l.* 14. *C. de advoc. diverſ. jud. junct. n.* 9 *noſtro ſupra.* Sunt (12) qui hoc beneficium tribuant nobilibus, aliiſque perſonis illuſtribus *vid. ſupr. n.* 33. *h. t.* Nota *Repulſionem Compenſationis* ceſſare (1) Cum ipſe creditor pauper eſt *l.* 6. *C. de Servitut.* (2) Si debitor operis ſuis ſe alere neceſſe habeat, ne egeat *arg. Nov.* 80. *cap.* 4. §. 1. *junct. l.* 30. *de re judic.* (4) propter abuſum *arg.* §. *ſ. J. de his qui ſunt ſui.* adde (5) ſupra viſum *l. ult.* §. 5. *C. de rei uxor. act.* Vel (3) propter obligationes mutuas quæ locum faciunt compenſationi §. 39. *h.* ex quo §. diſcas, ut compenſationi locus ſit, requiri *A.* utrinque debitum *l.* 1. *ff. de compenſat. B.* ut debeatur ex eadem cauſa (alias Retentioni locus erit) quod poſterius bene intellige, nam profecto ex diverſis quoque cauſis, quæ debentur, compenſari poſſunt. §. 30. *J. h. t.* Tu dic, eandem cauſam intellige, quæ ſit æque liquida *l. ult.* §. 1. *C. de compenſ. d.* §. 30. *J.* ibi *jure aperto h. t.* æque eorum fungibilium *l.* 4. §. 12. *C. eod.* debitum atque purum *l.* 7. *l.* 15. *l.* 16. §. 1. *l.* 22. *ff. eod.* atque verum & efficax *l.* 6 & 14. *ff. l.* 2. *C. eod. Pogenſ. num.* 3. Cæterum hic notandus eſt *concurſus actionum*, quando duæ pluresve actiones eidem adverſus eundem de eadem re, ex eadem cauſa competunt, unde qui ſurripuit & occidit ſervum, *furti*, & *L. Aquilia* actione tenetur, neque altera harum actionum alteram extinguit *l.* 2. §. 12. *ff. de privat. delict. Huber. præl. J. h.* Qui *dividitur* in *Electivum*, quo una actione electa, altera ei non licet, ſed ea conſumitur, ut actio *Tributoria* & *de peculio* concurrit *l.* 9. §. 1. *ff. de tribut. act.* Item actio ex furto injuriæ vel pœnalis cum extraordinaria perſecutione *delicti arg. l.* 41 *ff. de pæn. l.* 7. § 1 *ff. de injur. l.* 56. §. 1. *l. ſ. ff. de furt.* Tab. *Rerum. Crim.* 2. *th.* 25. *Brunn. Lex* 46. *th.* 95. *In Succeſſivum*, quo una actione electa, quod per eam obtentum non eſt poſſit per aliam conſequi. Nam petitur diverſum, non idem *l.* 57. *ff. d. R. J.* Hic obtinet (1) *in actionibus rei perſecutoriis concurrentibus l.* 11. §. 2. *ff. de Recept. rei judic. l.* 41 §. 1. *de O. & A. Huber præl. J. h. t. poſ.* 45. niſi *in actione ſuperſtite plus ſit*, quam in priore *vedum*, cum poſtulata eſt pœna promiſſa in violatæ fidei caſum actione ex ſtipulatu pleruaque ſocii uncoeſt, idem ipſe actione pro ſocio petere hunc prohibetur *l.* 41. *ff. pro ſoc.* Item vendicari equum a fure, ſed deterior factus redditus ſupereſt; condictio furtiva ad indemnitatem conſequendam *d. l.* 43. *ff. pro ſoc.* (2) In *actionibus rei perſecutoriis*, & *mixtis concurrentibus l.* 30. §. *ſ. ff. h.* (3) In actionibus *pœnalibus* & *rei perſecutoriis concurrentibus l.* 34. §. *ſ. ff. h.* In *Cumulativum*, quo ex omnibus actionibus concurrentibus licet commodum percipere, qui in actione *rei perſecutoria* & *pœnali ex eodem delicto deprehenditur l.* 7 §. 1 *ff. d. cond. furt.* ſiquidem actiones ad diverſum tendunt *arg. l.* 57 *ff. de R. J.* A quo concurſu *diverſa eſt actionum electivè concurrentium cumulatio alternativa*, ut ſi adverſus debitorem actio perſonalis & hypothecaria *a. l. ſ. C. ſi unus ex plurib. hered.* aut duplex actio, cum debeatur, utri ſit locus controvertitur *l.* 1. §. 4. *ff. quod legat.* ſiquidem actor ex una ſaltem actione, non utraque commodum amiſſi capit. *Mevius.*

# LIBER XLV.

## TITULUS I.

## De verborum obligationibus.

*Junge L.* 8. *C. tit.* 38.

D Stipulatio eſt *contractus*, [1] *Obſ.* 10 *de V. S.* qui præcedente verbali interrogatione, & in continenti ſubſequente congrua reſponſione perficitur *1.* §. *1. h.*

N §. *ſ. I. de obl.* 1. §. *1. de O. & A.* Eſt ſtricti juris. §. 28. *I. d. act.* 7. *pr. junct.* §. 1. *de eo, quod cert. loc.*

† Dividitur *(I.) ratione cauſæ in * voluntariam, §. 3. *I. de div. ſtipul.* quæ ex

D mente contrahentium explicatur; *id. h.* libero contrahentium arbitrio perficitur

*Id.*

*d. l. L.* * & neceſſariam, quæ fit ex hypothetica aliqua neceſſitate, ut *cautio* [5] damni infecti: *32. pr. h. L. 9. de præt. ſtip.* hæc iterum eſt vel D
* Prætoria, quæ fit ſolâ prætore jubente, D
*§. 2. de diviſ. ſtip. 5. pr. h.* * Judicialis, quæ fit ſolo judice jubente, D
*5. pr. h. §. 4. I.* * Communis, quæ interdum *mandato prætoris*, [6] interdum mandato judicis fieri ſolet. *§. 4. I. L. 5. pr. & Struv. ad tit. de prætor. ſtipul.* D
* (II) ratione objecti (1) in ſtipulationem rei ſive dandi, & faciendi, ſive faciendi: *§. f. I. 75 § 7 h.* (2.) in dividuas & individuas. *vid. Doſſel. hic Fr. Ex. 10. q. 4. Habn. h. n. 6 verb. a materia* (3.) in Judiciales, cautionales, & communes. *1. §. 1. de prætor. ſtip.* * (III.) ratione formæ accidentalis in puras & non puras.

C Cauſa * remota *jus civile*: [4] *Vinn. pr. I. h. n. 3 arg. 1. locat. conduct. arg. 14. §. 1. de novat. junct. l. 17. ff. de pact.* partim propter * *neceſſitatem*, [5] *7. §. 4. de pact. 27. C. h. tit. 1. C. de uſur.* propter * utilitatem, ſic per eam firmiores reddebantur contractus alii, *5. §. 1. de obl. empt.* præprimis *innominati*, [6] *4. 7. C. de rerum permutatione Fr. hic l. ad pr. h. n. 5.* A

* proxima eſt (1.) conceptio verborum ore prolata, *1. §. 2. h. 52. §. 2. de O. & A.* etiam *per interpretem* [7] *1. §. f. ff. §. 1. I.* antiquæ formulæ ſunt ſublatæ 10. C. (2.) Præcedens interrogatio, & ſubſequens reſponſio, *14. § 2. de O. & A. 1. §. 7. eod. 5. § 1. ff arg 1. C. h.* (3) *congrua* [8] *52. §. 2. de O. & A. & 83. pr. h.* (hinc excluditur diverſa, ratione (a) rei *§. 23. de inutil. ſtip. 83. §. 1 h. & 83. §. 1.* error nominis nihil nocet; *32. aut materia*, [9] dummodo de corpore conſtet modò *dolus abſit*: [10] *22.* (3.) qualitatis, ſi e. gr. purè ſtipulanti cum conditione ſit promiſſum: niſi diverſitas interrogationis & reſponſionis *illico placuerit* [11] contrahentibus: *1. §. 3. de temperſonali* [12] reſponſione: &c. *Vid. 1. §. 2. h. Vinn. ad §. 5. I. de inut. ſtip. n. 8.* (5.) quantitatis, ſi e. g. ſtipulanti XX. promittantur X. hic ſumma excedens *non debetur* [13] *1. §. 4. h. §. 5. de inut. ſtip.*) (4.) In continenti, *modicum* [14] tamen intervallum non nocet. *1. § 1. L. 137 pr. h.* (5.) Ut hæc omnia fiant animô ſtipulandi, qui in dubio *præſumitur* [15] ex interrogatione & reſponſione congrua. *7. §. 12. de pact. Obſ. 1.* [16] *C. h.* a

B * Stipulari * *impediuntur*, [17] qui carent * rationis uſu, ut furioſi, *l. 1. de pact. 1. §. 12. de O. & A.* mente capti, *arg. d. L. L.* infantia minores: *§. 10. de inut. ſtip.* non etiam prodigi, *6. de V. O.* neque infantia majores, qui etiam abſque tutore alium obligant. *§ 9. 10. I. h. t.* * qui carent *articulata voce* [18] *1. pr. §. 4. h. l. 14. de O. & A. 1. pr. h.* * facultate ſe invicem exaudiendi *1. pr.* ut ſunt abſentes, *1. pr. & §. 11. de inutil. ſtip. 14. C. d. contr. ſtip.* Surdi *1. pr. h. 1 §. f. de O. & A.* * prohibentur, * qui non ſunt *cives Rom.* [19] ut deportati, *14. §. 1. de novat.* Servi ex propria perſona, nam quod ſtipulantur, Domino acquiritur. *1. 2. I. & ff de ſtipul. ſerv.* B B D dn d. c. B

* filius & pater qui eum habet in poteſtate, *f. C. de impub. ſubſt. §. 6. I. de inut. ſtipul.* niſi *quoad caſtrenſia* [20] *3 de SC. Maced. 4. de jnoir.* a

* *alius pro alio*: [21] *38. § 17. quod regulariter* [22] in omnibus obligationibus obſervatur, *arg. 38. §. 17. 126. §. 2. h. 73. §. 4. de R. J. 11. de O. & A.* niſi (1.) ejuſdem poteſtati ſit ſubjectus, *140. §. 2. 38. §. 17.* (2.) ratione officii contrahat, ut tutor, *1. § 2. de conſt. pec.* Procurator. *6. tit. d. procurat.* (3) in eo negotio, ubi alteri per *alium contrahens* [23] acquiritur obligatio, e. g. per rei traditionem. ſi quis procuratori ſuo pecuniam dederit, ut eam alteri *daret mutuam* [24] *9. §. 8 de R. C. ult. §. 2. h. Vinn. ad 4. J. de inut. ſtip. n. 4. 4.* Sic ſi mihi & *Titio* [25] 100. ſtipuler, mihi tan- a

tum

tum 50. debeantur §. 4. I. de inut. stip. de Vinn. n. 2. Si mihi aut Titio stipuler, mihi tota summa debetur, [illegible] adjectus nihil petere potest [illegible] de solut. nec acceptare [illegible] de [illegible] [illegible] de solut. nec pignorare: [illegible] potest tamen eidem solvi: ut liberetur debitor * ipso jure §. 4. I. de inut. stip. licet (a) adjectus sit servus, vel pupillus, [illegible] & ei solvat absque tutore. [illegible] de solut. Vinn. ad §. 4. I. de inut. stip. n. 7. aut (b) ei solvatur prohibente [illegible] creditore, [illegible] §. 3. de solut. (5.) Creditori jam ante pars debiti sit soluta: [illegible] pr. de solut. modo (1) adjecti status non fuerit in deterius mutatus. [illegible] 38. pr. de solut. (2.) Lis à principali creditore non sit contestata, [illegible] de [illegible] 57. §. 1. de solut. (3) naturaliter solvatur nam adjectus non potest [illegible] acceptum ferre vel compensare. [illegible] de solut. (4) solvatur ipsi adjecto, non etiam ejus e. g. domino, [illegible] de solut. aut heredi, [illegible] nam est adjectus instar procuratoris: hinc etiam pecuniam restituere [illegible] creditori. [illegible] §. 1. de solut. [illegible] §. 1. h.

* ope exceptionis, si diversæ res sunt in stipulatione, & adjectione: e. g. mihi 100. aut Titio fundum dabis? [illegible] §. 4. I. O. & A.

* Promittere singulariter impediuntur, ii supr. qui impediuntur stipulari: prohibentur, qui non sunt cives Romani [illegible] & obligari non possunt.

Objectum sunt * RES §. [illegible] (quæ tamen, [illegible] §. [illegible] de O. & A. modò (1.) extent, [illegible] §. 2. I. O. & A. [illegible] (alias enim nec æstimatio debetur [illegible] h. nec poena adjecta, [illegible] h. §. 1. I. de inutil. stip. nisi ob moram vel culpam debitoris perierit. [illegible] §. 1. [illegible] §. [illegible]) (2.) sit in commercio. §. 2. de inut. stip. [illegible] §. 2. I. O. & A. [illegible] h. (3.) non sit stipulantis propria, & dari in specie stipuletur non dominus [illegible] pr. h. Vinn. ad §. 2. I. de inut. stip.) etiam plures simul: & ad plurium stipulationem * indefinite respondens, omnes promittere censetur: §. 17. I. de inut. stip. * copulativam, (e. g. Titium, Stichum, Pamphilum dabis?) respondens: Stichum dabo, ad reliquos non obligatur: nam sunt plures stipulationes, arg. [illegible] pr. [illegible] §. [illegible] h.

* disjunctivam (e. g. Titium aut Stichum dabis?) respondens: unum dabo, nihil agit, [illegible] cum diversa est interrogatio & responsio [illegible] §. [illegible] Plurium rerum unò vocabulò in stipulationem deductarum, una tantum est stipulatio, [illegible] pr. [illegible] h. Vinn. ad §. 17. I. de inut. stip. n. 1. * FACTA & non facta, §. [illegible] de Vinn. I. h. possibilia. e. g. [illegible] ut Titius hoc vel illud faciat: [illegible] pr. h. §. 3. de inut. stip. [illegible] pr. §. 1. h. [illegible] de R. I. non etiam qui factum alienum [illegible] promittere potest, [illegible] h. [illegible] de [illegible] §. 3. de inut. stip. (nam talis promissio ipso jure nulla est, [illegible] nec obligatur promittens ad curam, ut faciat alterum præstare, [illegible] C. [illegible] pro [illegible] vid. tamen [illegible] [illegible] §. [illegible] de [illegible] [illegible] Vinn. ad §. 3. I. de inut. stip. n. 3.) nisi sub poena promittat. e. g. Titium Romam iturum promitto, & si non iverit, tibi [illegible] aureos dabo. [illegible] §. 20. de inutil. stip.

Effectus est actio stipulati. quæ si datur ad rem certam, dicitur condictio certi ex stipulatu; si ad incertum, actio ex stipulatu. [illegible]

## Notæ variorum

An stipulatio sit [illegible]

(1) [Contrahentes] Quoniam ad eundem contrahendi, animus contrahens est [illegible], & hoc [illegible] Sed quoniam ad effectum obligandi, [illegible] contrahens est [illegible], [illegible] [illegible] §. [illegible] de V. O. [illegible] in stipulatione. [illegible] Contrahens [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] Prætoris [illegible] [illegible] [illegible]

[illegible]

[illegible]

[illegible]

[illegible]

debetur liberari nequit, ut creditor nihil conſequatur, atque hoc ſenſu illa ſolutio *d. l.* 50. fieri poſſe negatur. Sed ita tamen fieri poteſt, ut debitor liberetur, ſed adjectus [illegible] ſuo ſeculo [illegible] debetur, nec habetur, hoc tamen illum [illegible] preſſum, licet adjectus ſolvendo non ſit, nam [illegible] debitorem voluntate liberandi, ſuper cum [illegible] ſubſtitutus, adjectio eſt voluntate creditoris [illegible] *Theus*

(32) [*Reſtituat*] Niſi [illegible] adjectum, *l.* 31. §. 1. [illegible] Sic enim adjectus pecuniam recipere, non & [illegible] compenſandoque debitum tollere poſſet. *Bergh.*

(33) [*Civis Romanus*] Hæc verba peregrinum non [illegible], nempe qui non conſtituendo habeat [illegible] *Cuiac.* peregrinos [illegible] de [illegible] qui propter delictum non Civitatem [illegible], [illegible] hæredes ſuſtinere. *Bergh.*

(34) [*Quamvis*] Scil. quæ ſunt in commercio. *Bergh.* Verbum ſequitur, vel *certa res*, vel *facta*, vel non *facta*. Denique *circa impendendam a debitore præſtationem dolo, lata & levis culpa*, unde [illegible] *faciendi* à promiſſore [illegible] adhibenda eſt diligentia, *l.* 137. §. 2. [illegible] *ff. h. t.* [illegible] *dando non impedienda ab ipſo levi culpa debitor* [illegible] *faciendi* [illegible] culpam, quæ in [illegible] *conſiſtit*, nam qui dare promiſit, ad dandum non faciendum tenetur, *l.* 91. *ff. h. junct. l.* 51. *ff. eod.* [illegible] 47 [illegible] 24. *Bergh.*

(35) [*Exiſtat*] Vel exiſtere poſſit. *Bergh.*

(36) [*Potuerit*] Modo res non niſi poſt [illegible] pertinere [illegible], & ſtipulator eam rem voluiſſet & promiſſor vendere. Sic enim in ſolvo habuiſſet pretium. *Bergh.*

(37) [*Stipulator non dominus*] Niſi quatenus [illegible] ea non habeat, aut ſub conditione ſolla ſtipulatio. *ff.* [illegible] *Bergh.*

(38) [*Nihil agit*] Hæc ita ob ſolemnitatem ſtipulationis, ubi [illegible] reſpondere debet. Si ergo hodie [illegible] promiſſio fieret, non video, quare non per omnia [illegible] *poſſe* [illegible] debeat. *Bergh.* Ad ſtipulationem Decem [illegible] *c.* 97. dominum aut agrum [illegible] reſpondeas, unum dabo, non tenetur, neque enim ad interrogatum eſt reſponſum *l.* 83. §. 2. *ff. h.* [illegible], quæ de valore [illegible] reſpondeant [illegible] reſponſione, quæ non poſſit habere, [illegible] *Hopp. ad* §. 17 *J. de inutil. ſtipulat.* [illegible] *Bergh.*

(39) [*Cavebo*] Quod ſi verò *autem* operam [illegible], ut alteri ſolvat, [illegible] tamen [illegible] ſequitur? Communior eſt ſententia, ipſum ſenſiſſe ſua promiſſione, [illegible] quod ad illum compellendum facere poterat. [illegible] *ſua perſona promiſerit* [illegible] *ſcriberet* [illegible] habeat [illegible]. *Bergh.* *l.* 406. *Bergh.*

(40) [*Adſcitum alterum*] Quia ex alterius contractu nemo obligatur. *l.* 3. *C. ne uxor pro marit.* *Bergh.*

(41) [*Fide autem*] In hoc [illegible] ſolum promittens propriam [illegible], ſive pœna [illegible] ſolo [illegible] Ego [illegible] ne pro [illegible] *Bergh.* Hæc in eo [illegible] habet, quod quoties quis *ad dandum* obligatus eſt, [illegible] promiſſum [illegible] præſtare tenetur, nec præſtando [illegible] ſeſe liberare poſſit. *vid. l.* 75. §. *f. ff. de V. O.* quoties verò *quis factum* aliquod promiſit, [illegible] ad illud præſtandum [illegible] non poteſt, ſed liberatur [illegible], unde [illegible] præſtare, id eſt, damnum reſarcire [illegible], quod in non adimplenda [illegible] *l.* 13. §. *f. ff. de re judic.* [illegible] differentia eſt, quæ [illegible] rem promiſſam dare recuſat, ea facile invito promittenti per [illegible] auferri poteſt, quod in facto promiſſo non æque procedit. *Land. h. d.* 2.

(42) [100. *aureos dabo*] Alias, qui ſine hac obligatione ad pœnam [illegible] promiſit, [illegible] dare, ad [illegible] tenetur, *arg. l.* 38. *pr. d. V. O.* *Bergh.*

Reſpondens [illegible] [illegible] [illegible] in ſolidum.

# TITULUS II.

## De duobus reis conſtituendis.

*Junge l.* 8. *C. tit.* 40.

D *uo rei* [1] ✱ credendi ſunt plures perſonæ, *pr. l. h.* quibus ab uno eadem res, 2. 9. ex eadem cauſa. 9. 12. & quidem ſinguli *in ſolidum*, [2] §. 1. *l. L.* 2. 3. §. 1. omnibus tamen una debetur. §. 1. *l. L.* 3. §. 1. D

✱ debendi ſunt plures perſonæ, *pr. l.* quæ uni eandem rem, 2. 9. ex eadem cauſa, 9. 12. 1. §. 3. & quidem ſinguli in ſolidum, omnes tamen unam debent. D

Con-

B *Constituuntur* [illegible] per * conventionem; modo ut alternativè conventum. [illegible] nam [illegible] * obligationem, [illegible] nisi expresse constet de alia contrahentium voluntate, [illegible]) ut * contractum omnem, [illegible] e. g. stipulationem, [illegible] (ubi non necessario expressis verbis adjiciendum est, duos reos nunc constitui, sed sufficit, si hoc ex formula appareat, sive quod uterque eandem rem promittat: [illegible] quod nec hodie mutatum [illegible] qui sese obligarunt, samt und sonders [illegible] unterschiedliche Burgen. [illegible]) depositum, commodatum, mutuum, [illegible] emtionem, venditionem, locationem, conductionem, mandatum, [illegible] liberarum obligationem: [illegible]

C * debitum, quoad actiones rei persecutorias, [illegible] non etiam quoad [illegible] * & mixtas, [illegible] * quasi delictum. [illegible]

*Correus* * *credendi* etiam invito vel ignorante altero correo, potest exigere totum debitum [illegible] & si unus litem sit contestatus, debitor alteri correo solvens nihil agit: [illegible] etiam, si alter solutum acceperit, obligatio in totum extinguitur: [illegible] idem est in acceptilatione, [illegible] compensatione, [illegible] & novatione, si correi non sint socii, [illegible] (secus si sint socii, [illegible]) in juramento delatione & praestatione: [illegible] NON etiam, si unus pacto [illegible] remiserit debitum, [illegible] nec si compromittente alterutro laudum absolverit debitorem, nisi sint socii. [illegible] Si unus præscriptionem interruperit interpellatione, hoc alteri [illegible] neque quod unus accepit, alteri communicare debet, [illegible] (Diss. [illegible] vel natura obligat. propter [illegible]) nisi sint socii, [illegible] quales hi sunt omnes, qui duo rei stipulandi facti sunt ex causa onerosa [illegible]

* Debendi [illegible] possunt conveniri, [illegible] licet alter nihil acceperit: neque hic locum habet [illegible] potest tamen etiam à singulis pars exigi: [illegible] partis ab uno exactio non impedit, quo minus reliquum ab eodem peti possit. [illegible] nisi partem solvens expressim dicat, se solvere pro sua parte, & creditor accipiens hanc non contradicat, [illegible] Hodie habent beneficium divisionis [illegible] non alter correus [illegible] domicilium [illegible] non subjectum habeat. [illegible]

rint (2.) non ſit ſolvendo, *N.* [illegible] *Ant.* [illegible] C. h. quod alter probat [illegible] *arg.* [illegible] *L. de replic. Obſ.* [illegible] *de fidej.* (3.) huic beneficio renunciaverit: [illegible] *C. de paſt.* (4) ſint [illegible] locis, *Perez.* h. num. 17. *Ca.* [illegible] 17. *d.* 12.) licet alter *ſub conditione,* [illegible] alter pure promiſerit. *arg.* 27. *de fidej.*

D Si unus ſolidum præſtitit: [illegible] *f. C.* * reliqui liberantur in totum. [illegible] *§.* [illegible] *L. h.* [illegible] ficta ſolutione, e. g. acceptilatione, 2. h. novatione, [illegible] *ad SC. Vellej.* pacto [illegible] non petendo *real.* [illegible] ab eo interpoſito, cujus intereſt correum ſuum quoque liberari: 21. *§. f. de paſt.* [illegible] *de liberat. legat.* [illegible] *§.* [illegible] *Vinn. ad §.* [illegible] *I. Perez.* h. num. [illegible] e. gr. Socio, *d. LL.* (ſecus eſt, ſi proficiendi non intereſt, *arg.* [illegible] *de paſt.* [illegible] *§.* [illegible] *§.* [illegible] *de liberat. legat.* aut pactum ſit *perſonale* [illegible] *§.* [illegible] *de paſt.* non etiam *ante compenſatione,* [illegible] niſi ſit *focius,* [illegible]) judicis ſententia abſolutus ſit propter cauſam ex ipſo contractu deſcendentem, (ſecus eſt, ſi propter *cauſam perſonæ,* [illegible] e. gr. reſtitutionem in integrum, [illegible] *§.* [illegible] *poſt. f.*) item ſi judice deferente juravit non deberi: [illegible] *§.* [illegible] *de jurej.* Sententia adverſus unum lata, contra alterum non poteſt *exequi* [illegible] *propter* [illegible] *de re jud.* [illegible]

d. * partem à correo * jure ſtricto non repetit, niſi ſit ſocius, [illegible] *ad L. Falc.* [illegible] *C. h. Perez.* h. num. [illegible] qualis eſſe creditur, qui ex cauſa *reſpectu creditoris* [illegible] debitor eſt. [illegible] C. h. * ex æquitate repetit actione utili [illegible] [illegible] *Barb. ad W. h. Ca.* [illegible] *d.* 14. *Faber in C. h. def.* [illegible] *Unius mora* [illegible] non nocet alteri. [illegible] *§.* [illegible] *de uſur.* [illegible] *de N. G. Obſ.* [illegible] *h.* [illegible]

A *Atque poteſt* [illegible] conditio, dies, locus: *§. f.* [illegible] *L.* [illegible] *f. h.* ita, ut alter pure, alter e. g. in diem promittere poſſit: 7. [illegible] *§. f.* non etiam poteſt unus dolum tantum, alter culpam etiam præſtandam promittere: [illegible] *§.* [illegible] nam hæc diverſitas *perſonæ* [illegible] eſt.

## *Notæ variorum.*

(1) [*Duo rei*] [illegible]

(2) [*In ſolidum*] [illegible]

(3) [*Conſtituuntur*] [illegible]

[illegible] [illegible], [illegible] [illegible], [illegible] [illegible] [illegible]. *[illegible]*

(4) [*[illegible]*] [illegible] *[illegible]* ... 100 ... [illegible]

(5) [*Obs. [illegible] 99*] [illegible] ... *Brunn.*

(6) [[illegible]] [illegible] ...

(7) [*Obs.* [illegible]] [illegible] ...

(8) [*[illegible]*] [illegible] ... 100 ... *Brunn.*

(9) [*[illegible]*] [illegible] ...

(10) [*[illegible]*] [illegible] ...

(11) [*[illegible]*] [illegible] ... (1) ... (2) ... *[illegible]*

(12) [*[illegible]*] [illegible] ... (1) ...

[illegible] ... (2) ...

(13) [*[illegible]*] [illegible] ...

(14) [*[illegible]*] [illegible] ... *Brunn.*

(15) [*[illegible]*] [illegible] ...

(16) [*[illegible]*] [illegible] ... *[illegible]*

(17) [*[illegible]*] [illegible] ...

[illegible] (2)

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

tum reo debetur [illegible] Si mihi aut Titio ſtipuler, mihi tota ſumma debetur, [illegible] adjectus nihil petere poteſt [illegible] de ſolut. nec acceptum ferre [illegible], nec pignora: [illegible] de pign. poteſt tamen eidem ſolvi: ut
F liberetur debitor ipſo jure [illegible] licet (a) adjectus ſit ſervus, vel pupillus, & ei ſolvat abſque tutore: [illegible] de ſolut. [illegible] aut (d.) ei ſolvatur prohibente creditore, [illegible] de ſolut. (y.) Creditori jam ante pars debiti ſit ſoluta: [illegible] de ſolut. modo (1) adjecti ſtatus non fuerit in deterius mutatus, [illegible] de ſolut. (2.) Lis a principali creditore non ſit conteſtata, [illegible] de ſolut. (3) naturaliter ſolvatur: nam adjectus non poteſt acceptum ferre vel compenſare [illegible] de ſolut. (4.) ſolvatur ipſi adjecto, non etiam ejus e. g. domino, [illegible] de ſolut. aut heredi, [illegible] nam eſt adjectus inſtar procuratoris: hinc etiam pecuniam reſtituat creditori. [illegible] de ſolut. [illegible]

I. * ope exceptionis, ſi diverſæ res ſunt in ſtipulatione, & adjectione: e. g. mihi decem aut Titio fundum dabis? [illegible] O. & A.

h. * Promittere ſingulariter impediuntur, [illegible] qui impediuntur ſtipulari: prohibentur, qui non ſunt cives Romani [illegible] & obligari non poſſunt. O

G Objectum ſunt * RES [illegible] de O. & A. modò (1.) certæ ſint, [illegible] O. & A. (alias enim nec æſtimatio debetur [illegible] nec pœna adjecta, [illegible] niſi ob moram vel culpam debitoris perierit. [illegible]) (2.) ſit in commercio: [illegible] O. & A. [illegible] (3.) non ſit ſtipulantis propria, & dari in ſpecie [illegible] etiam plures ſimul: & ad plurium ſtipulationem * indefinite reſpondens, omnes promittere cenſetur: [illegible] * copulativum, (e. g. Titium, Stichum, Pamphilum dabis?) reſpondens: Stichum dabo, ad reliquos non obligatur: nam ſunt plures ſtipulationes, [illegible]

* disjunctivum (e. gr. Titium aut Stichum dabis?) reſpondens: unum dabo, nihil agit, [illegible] nam diverſa eſt interrogatio & reſponſio [illegible] Plurium rerum unô vocabulô in ſtipulationem deductarum, una tantum eſt ſtipulatio, [illegible]

K * FACTA & non facta, [illegible] poſſibilia e. g. [illegible] ut Titius hoc vel illud faciat: [illegible] non etiam quæ factum alterius [illegible] promittere poteſt, [illegible] (nam talis promiſſio ipſo jure nulla eſt, [illegible] nec obligatur promittens ad curam, ut faciat alterum præſtare, [illegible] niſi ſub pœna promittat. e. g. Titium Romam iturum promitto, & ſi non iverit, tibi [illegible] aureos dabo. [illegible]

Effectus eſt actio ſtipulati, quæ ſi datur ad rem certam, dicitur condictio certi ex ſtipulatu; ſi ad incertum, actio ex ſtipulatu. [illegible] L

## Notæ variorum

An ſtipulatio ſint [illegible]

(1) [illegible] Quantum ad modum contrahendi, omnes contractus eſt [illegible] ſed quantum ad effectum obligandi, [illegible] Ad [illegible] & Labeone [illegible] quod [illegible] ſed quod Proculus [illegible] Labeone [illegible] Ceterum cum [illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

debetur liberari neque, ut creditor nihil conſequatur, atque hoc [illegible] l. 20. fieri poſſe negetur, ſed ita tamen fieri poſſit, ut debitor liberetur, ſed [illegible] [illegible] Thom.

(32) [Reſtituat] Niſi [illegible] l. 31. §. 1. h. t. [illegible] Brunn.

(33) [Civis Romanus] Hæc verba peregrinis non applicanda, [illegible] Omnes peregrini C. romani facti ſ. de illis qui propter delictum [illegible] Brunn.

(34) [Quanti] [illegible] Brunn. [illegible] [illegible] l. 137. §. 2. ff. h. [illegible] l. 91. ff. h. [illegible] Brunn.

(35) [Exhibeat] Vel exhibere poſſit. Brunn.

(36) [Perierit] [illegible] Brunn.

(37) [Stipulatur cum dominus] Niſi [illegible] Brunn.

(38) [Nihil agit] Hoc ex eo [illegible] reſpondere debet. Si ergo hodie talis promiſſio fiat, non video, quare non per modum pacti ſuſtineri debeat. Brunn. Ad ſtipulationem [illegible] l. 83. §. 2. ff. h. [illegible] Hopp. ad [illegible] §. 17. J. de inutil. ſtipulat. [illegible]

(39) [Cavendo] Quod ſi verò [illegible] l. 406. Brunn.

(40) [Adſtim alterutrum] [illegible] l. 3. C. [illegible] Brunn.

(41) [Vide tamen] [illegible] l. 75. §. [illegible] ff. de V. O. [illegible] ff. de re judic. [illegible] Lud. h. d. 2.

(42) [100 aureos dabo] [illegible] l. 31. pr. d. V. O. Brunn.

# TITULUS II.

## De duobus reis conſtituendis.

*Junge l. 8. C. tit. 40.*

Duo rei [1] * credendi ſunt plures perſonæ, pr. I. h. quibus ab uno eadem res 2. 9. ex eadem cauſa. 9. 12. & quidem ſinguli *in ſolidum*, [2] §. 1. I. L. 2. 3. §. 1. omnibus tamen una debetur. §. 1. I. l. 3. §. 1. D

* debendi ſunt plures perſonæ, pr. I. quæ uni eandem rem, 2. 9. ex eadem cauſa, 2. 12. 2. §. 3. & quidem ſinguli in ſolidum, omnes tamen unam debent. D

Con-

D *Constituuntur* per * conventionem; modo id alternative conventum. 2. §. 1. *de leg.* [illegible] nam *separatim* [illegible] * obligationem, [illegible] §. [illegible] *de eo quod certo loco* [illegible] *pr. de V. O.* [illegible] nisi expresse constet de alia contrahentium voluntate, [illegible] *pr.*) ut * contractum omnem, [illegible] *C.* [illegible] e. g. stipulationem, [illegible] (ubi non necessario expressis verbis adjiciendum est, duos reos nunc constitui, sed sufficit, si hoc ex formula apparet, forte quod uterque eandem rem promittat [illegible] quod nec hodie mutatum: [illegible] *Jason.* [illegible] (*obs. N.* [illegible] *C. de* [illegible] *Gail.* [illegible] *Gudel. de* [illegible] qui sich obligirunt, sammt und sonderlich [illegible] *Tronc.* [illegible] unterstreichen. *Besold. thes. pract. voc.* unterschiedene Burgen *Ramming. obs. pract. voc.* [illegible] *obs.* [illegible]) depositum [illegible] commodatum, [illegible] mutuum, [illegible] *C.* (*obs.* [illegible] *C.* [illegible] *pr.*) emtionem, venditionem, locationem, conductionem, [illegible] mandatum, [illegible] §. [illegible] *mandat.* literarum obligationem: *arg.* [illegible]

* & quasi contractum, [illegible] ut aditionem hereditatis. [illegible] §. [illegible] *de leg.* [illegible] *de leg.* [illegible] *de Leg.* [illegible] tutelæ administrationem. [illegible] *de adm. & peric. tut.* b.

* delictum, quoad actiones rei persecutorias, [illegible] §. [illegible] *quod metus caus.* [illegible] §. [illegible] *junct.* [illegible] *de* [illegible] *per quem fact.* non etiam quoad *poenales* [illegible] & mixtas, [illegible] a.

E §. [illegible] *ad L. Aquil.* * *quasi delictum.* [illegible] §. [illegible] *junct.* [illegible] *de his qui dejic.* a.

*Correus* * *credendi* [illegible] etiam invito vel ignorante altero correo, potest *exigere* C [illegible] debitum [illegible] *de novat.* [illegible] §. [illegible] *de leg.* [illegible] & si unus litem sit contestatus, debitor alteri correo solvens *nihil agit.* [illegible] *arg.* [illegible] *de fid.* sic etiam, si alter solutum acceperit, obligatio in totum extinguitur. [illegible] idem est in acceptilatione, *arg.* [illegible] *de acceptil.* [illegible] compensatione, *arg.* [illegible] & novatione, si correi non sint socii, [illegible] §. [illegible] *de nov.* (secus si sint socii, [illegible] *pr. de pact. Wesenb.* [illegible] *Habn.* [illegible] *Diss. Perez. in C.* [illegible]) in juramento delatione & præstatione: [illegible] *de jurej.* NON etiam, si unus pacto [illegible] remiserit debitum, [illegible] *pr.* & §. [illegible] *de pact.* [illegible] *V. 2. D.* [illegible] nec si compromittente alterutro laudum absolverit debitorem, nisi sint socii [illegible] *de recept. qui arb.* Si unus præscriptionem interruperit interpellatione, hoc alteri *etiam prodest* [illegible] *C.* [illegible] neque quod unus accepit, *alteri communicare* [illegible] debet, [illegible] *ad L. Falc. Mesina.* [illegible] *Perez. in C.* [illegible] *Bach. V. 2. D.* [illegible] (*Diss. Habn.* [illegible] *verb. vel natura obligat. propter L.* [illegible] *de R. C.*) nisi sint socii, [illegible] *ad L. Falcid.* quales hi sunt omnes, qui duo rei stipulandi facti sunt ex causa *societatis* [illegible] *d. L.* [illegible] *Perez. d. l.*

* Debendi *singuli in solidum* [illegible] possunt conveniri, [illegible] *pr.* §. [illegible] *C.* [illegible] licet alter nihil acceperit: neque hic locum habet *beneficium* [illegible] *C.* [illegible] *pr.* [illegible] *C.* [illegible] *Obs.* [illegible] *C.* [illegible] *de duob. reis.* potest tamen etiam a singulis pars exigi: [illegible] §. [illegible] partis ab uno exactio non impedit, quo minus reliquum ab eodem peti possit. [illegible] §. [illegible] *de leg.* [illegible] *C. de fidejuss.* nisi partem solvens expresse dicat, se solvere *pro sua parte,* [illegible] & creditor accipiens tunc non contradicat, [illegible] *Cod. de pact. Perez.* [illegible] *Anton. Robert.* [illegible] *rerum jud.* [illegible] *Bach. V. 2. D.* [illegible] (*Obs.* [illegible] *C.* [illegible] *Tonning.* [illegible] *Habn.* [illegible]) Hodie habent beneficium *divisionis,* [illegible] (*N.* [illegible] *Schol.* [illegible] *ad l.* [illegible] *Wesenb.* [illegible] *Bach.* [illegible] *Diss.* [illegible] *Arum.* [illegible] *Perez.* [illegible] *Donell. in Aut. hoc ita, C.* [illegible] nisi alter correus [illegible] absit, *N.* [illegible] *Aut. hoc ita C.* [illegible] domicilium *ejusdem judicis* [illegible] non subjectum habeat: *Schard. ad* [illegible] *C.* [illegible]

aut (2.) non ſit ſolvendo. *N. 10. c. 1. Aut. aut. hoc ita C. h.* quod alter probat [illegible] *arg. pr. l. de repkt. Obſ. 10. de fidej.* (3.) huic beneficio renunciaverit: *ꝑ. C. de paſt.* (4) ſint *mercatores* [illegible] loco. *Perez. h. num. 17. Ca. 1. c. 17. d. 12.*) licet alter *ſub conditione*, [illegible] alter pure promiſerit: *arg. 17. de fidej.*

D Si unus ſolidum præſtat: *v. ſ. C.* * reliqui liberantur in totum. *2. ſſ. ſ. 1. l. h.* quum facta ſolutione, e. g. acceptilatione, *2. h.* novatione, *20. ad SC. Vellej.* pacto de non petendo *reali*, [illegible] ab eo interpoſito, cujus intereſt, correum ſuum quoque liberari *21. ſ. ſ. de paſt. 3. ſ. 3. de liberat. legat. 2. ſ. 1. v. Vinn. ad ſ. 1. I. Perez. h. num. 6.* e. gr. Socio, *dd. LL.* (ſecus eſt, ſi paciſcentis non interſit, *arg. 23. 21. ſ. 2. de paſt. 2. ſ. 1. h. 3. ſ. 3. de liberat. legat.* aut pactum ſit *perſonale* [illegible] *21. ſ. 1. de paſt.* non etiam *ratione compenſationis*, [illegible] niſi ſit *ſocius*, [illegible] *10. h.*) judicis ſententia abſolutus ſit propter cauſam ex ipſo contractu deſcendentem, (ſecus eſt, ſi propter *cauſam perſonæ*, [illegible] e. gr. reſtitutionem in integrum, *12. ſ. 1. [illegible]*) item ſi judice deferente juravit non deberi: *28. ſ. 1. de jurej.* Sententia adverſus unum lata, contra alterum non poteſt *exequi* [illegible] *propter 63. de re jud.* [illegible]

* partem à correo * jure ſtricto non repetit,

& niſi ſit ſocius, *62. ad L. Falc. 2. C. h. Perez. h. num. 19.* qualis eſſe creditur, qui ex cauſa *reſpectu creditoris corre[illegible]* [illegible] debitor eſt. *2. C. h.* * ex æquitate repetit actione utili *negotiorum geſtorum* [illegible] *Barb. ad W. h. Ca. 2. c. 17. d. 14. Faber in C. h. def. 1. 999. Unius mora* [illegible] non nocet alteri. *32. ſ. 4. de uſur. 90. de N G Obſ. 18. h.* [illegible]

A *Atqui poteſt* [illegible] conditio, dies, locus: *ſ. ſ. I. L. 7. ſ. h. 12.*, ut alter pure, alter e. g. in diem promittere poſſit: *7. 9. ſ. ſ.* non etiam poteſt unus dolum tantum, alter culpam etiam præſtandam promittere: *9. ſ. 1.* nam hæc diverſitas *perſonæ* [illegible] eſt.

## *Notæ variorum.*

Quid cre-dendi vel de-bendi.

(1) [*Duo rei*] Tractatio hæc generalis eſt, pertinetque ad omnem [illegible]

[illegible]

(2) [*In ſolidum*] Generaliter verum eſt, quod ſi plures contrahant [illegible] Opus ergo eſt ut exprimatur, ſe in ſolidum velle obligari, quo ipſo fiunt correi. *Berg.*

Quorum plu-res contra-[illegible]

(3) [*Conſtituantur*] [illegible] *Harp. 99.* [illegible]

[illegible]

(4) [illegible]

(5) [illegible]

(6) [illegible]

(7) [illegible]

(8) [illegible] 100. [illegible]

(9) [illegible]

(10) [illegible]

(11) [illegible] (1.) [illegible] (2.) [illegible]

(12) [illegible] (1.) [illegible] (2.) [illegible] (3.) [illegible]

(13) [illegible]

(14) [illegible]

(15) [illegible]

(16) [illegible]

(17) [illegible]

[illegible] (2.)

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

## AD TITULUM III.

### De ſtipulatione ſervorum.

# LIBER XLVI.

## TITULUS I.

## De fidejuſſoribus & mandatoribus.

*Junge l. 8. C. t. 41. l. 5. x t. 23.*

D Fidejuſſio, [illegible] *de V. O.* eſt ſtipulatio, qua quis alterius obligationem in majorem creditoris *ſecuritatem*, [illegible] *de O. & A.* [illegible] in fidem ſuam recipit, [illegible] ita tamen, ut principalis quoque maneat obligatus, [illegible]

*Fidejuſſor* eſt vel (1.) neceſſarius, [illegible] *de his, qui ſatisd. cog.* qui ex aliqua *dispoſitione neceſſario* [illegible] conſtituitur; [illegible] vel voluntarius &c. (2.) judicialis, qui in judicio, & extrajudicialis, qui extra judicium conſtituitur, *Hering. de fidejuſſ.* [illegible] (3.) principalis, qui pro principali debitore obligatur; [illegible] & ſuccedaneus, qui *pro debito neceſſario* [illegible] ſive fidejuſſore obligatur. [illegible] (4.) ſimplex, qui pro debito ſe ſimpliciter obligavit, & indemnitatis, qui in id tantum ſe obligavit, ſi ex reo debitum ſuum conſequi non poſſit, [illegible] *de V. O.* [illegible] *Hering.* [illegible]

Conſtituitur * jure civili ſtipulatione, [illegible] quibuſcunque verbis [illegible] *Hering.* [illegible] NON etiam nudo conſenſu, [illegible] *Hering.* [illegible] vel alio modo præter verba; [illegible] *de V. O.* *Hering.* [illegible] hanc ſtipulationem rite interpoſitam credamus, ſi inſtrumento hoc *probatur*, [illegible] *de V. O.* [illegible] *C. de contrah. ſtipul.* niſi pleniſſimis probationibus *impugnetur* [illegible] inſtrumentum, [illegible]

C * Hodie conſenſu libero, [illegible] *C. de O. & A.* [illegible] quod [illegible] (niſi quod filius pro patre [illegible] fidejubere; *N.* [illegible]) etiam nudo, [illegible] *Spendel.* [illegible] declaratio utcunque *dd. LL.* etiam tacita, *Hering.* [illegible] & ſubſcriptione chirographi, [illegible] *de contrah.* [illegible] in quo *ſecuritas* * eſt, cum fidejuſſionem datum, *dd. LL.*

D Fidejuſſores poſſunt * accipere omnes creditores, [illegible] qui non * impediuntur, [illegible] de jure civ. (vid. C. qui ſtipulari non poſſunt; [illegible] *de V. O.* * prohibentur [illegible] de jure civ. (vid. C.) qui ſtipulari prohibentur, ut deportatus, &c. [illegible] *Hering.* [illegible] (*Diſſ. Carpz.* [illegible])

* eſſe omnes, qui ſtipulanti promittendo (*de jur. civ.* vid. C.) obligari poſſunt, vid. *Spendel.* [illegible] *Hering.* [illegible] nec ſpecialiter prohibentur, ut (1.) *milites* [illegible] armatæ militiæ, [illegible] *C. de locat.* vid. [illegible] *Hering.* [illegible] *de his, qui ſatisd.* [illegible] *de procurat.* (2.) mulieres [illegible] *de fidejuſſ.* [illegible] *N.* [illegible] vid. *Hering.* [illegible] quod in Lutherana [illegible] (3.) Curiales ſive decuriones; [illegible] *C. de locat.* vid. *Hering.*

[illegible] (a) [illegible]

Objectum eſt obligatio, [illegible] cum qua futura obligatio accedit, [illegible] in pendenti eſt fidejuſſio, [illegible] que actio obligatur, non exiſtentem principalem obligationem [illegible], five ſit naturalis tantum, [illegible] in plenum [illegible] five civilis tantum, [illegible] tamen accedere fidejuſſio [illegible] eſt, five ſit mixta [illegible]. Nec refert, quando ſit procedens obligatio, nec etiam quæ cauſa deſcendat, aut cujus perſona ſit, [illegible] valida eſt fidejuſſio, accedens obligationi accesſorie, [illegible] contra SC. Macedonianum [illegible] hujus tamen fidejuſſor etiam habet exceptionem SCti Macedoniani [illegible] Fœminæ contra SC. Velleianum [illegible] exceptione SCti Velleiani [illegible]) Contra ſic pupilli [illegible], ut quo non eſt locupletior factus, [illegible] obligatio habetur, quatenus de alterius præjudicio quæritur, [illegible] licet quoad ſuum præjudicium Jure civ. non habeatur pro obligato; alio modo [illegible]) Aut [illegible] conventis [illegible] licet principalis obligatio veniat ex delicto, vel [illegible] modo ipſum ad pœnam perveniat, minime tamen etiam admittitur fidejuſſor ratione delicti, quod pœna corpora afflictiva ſequatur [illegible] hoc [illegible] ex qualitate delicti, [illegible] & [illegible] obligari poteſt pro [illegible] quam eſt in principali obligatione; nam ſi plus promittit [illegible] quantitatem, fidejuſſio in totum eſt nulla. [illegible] X. [illegible] X. [illegible] & fidejuſſor reſpondit XX. promitto [illegible]; ſic enim quoad debitam ſummam X. [illegible] quod hodie [illegible] procedit [illegible] efficacius tamen obligari poteſt, [illegible] aut civiliter & naturaliter tantum [illegible]

Obligatur [illegible] fidejuſſor & poſt [illegible] principalis, & eligit creditor, utrum conveniat velit [illegible] in ſolidum [illegible] (novo jure tamen habent beneficium diviſionis.) & heredes, [illegible] licet fidejuſſor expreſſe dixerit, [illegible] modo non excepit heredes expreſſe [illegible] in locum defuncti fidejuſſoris alius ſubſtituere [illegible] heredes tenentur pro rata. [illegible] ad certam ſummam ſe obligavit, ad illam ſummam, [illegible] ſimpliciter obligavit [illegible] fidejuſſorem pro Titio, non tenetur niſi [illegible] quod tempore fidejuſſionis eſt in obligatione, [illegible] omnem cauſam, non tenetur etiam ratione [illegible], quæ ex poſtfacto accesſerunt, [illegible] & omnis intereſſe, [illegible]

Inde

Inde datur contra fidejuſſorem *condictio certi*, [illegible] ſi certum eſt in obligationem deductum; vel actio ex ſtipulatu, ſi incertum ſit in obligatione, *de quib. ſup.* [illegible]

*BENEFICIA* fidejuſſorum ſunt * (1) *ORDINIS* [illegible] *N.* [illegible] (*de fid.* [illegible] *vid. L.* [illegible] *C. h.*) quod in genere eſt privilegium, conceſſum in favorem eorum, qui tantum principaliter tenentur, ne bonis principalis debitoris, nondum excuſſis, ipſi cum effectu conveniantur. *vid. Diſſ.* [illegible] *de benef. excuſſ.*

* (2.) *DIVISIONIS*, quod eſt privilegium [illegible] *ff. h.* competens pluribus fidejuſſoribus, ut a ſingulis ſolidum, ſed viriliſ tantum portio exigatur. Introductum edicto D. Hadriani, [illegible] *L.* [illegible] *h.* datum fidejuſſoribus, &c. [nam quod mandatoribus, conſtitutoribus, tutoribus, [illegible] *C. de conſ. pec.* [illegible] *de tut.* [illegible] *Diſſ. de* [illegible] *Div.* [illegible]] qui tempore litis conteſtatæ ſolvendo ſunt, omnibus [illegible] modo ſint [illegible] [illegible] *h.* [illegible] pure, etiam in diem ſit obligatus. [illegible] *C. h.* Effectus hujus beneficii eſt exceptio, qua cum is, ſi [illegible] ſolidum condemnatus, eidem non datur contra reliquos regreſſus [illegible] atque eſt [illegible] licet poſtea unus vel alter [illegible] eſſe ſolvendo [illegible] hanc etiam poſt litem conteſtatam poteſt opponi. [illegible] *C. h.* [illegible] exceptio (1) ſi tempore litis conteſtatæ omnes ſolvendo non ſint, tum enim eorum portio reliquis accreſcit: [illegible] *L.* [illegible] *C. h.* (2) in [illegible] *fidejuſſ.* [illegible] qui promiſerunt rem pupilli ſalvam fore. [illegible] ſi unus ſit fidejuſſor principalis, alter *ſuccedaneus*. [illegible] (4) ſi quis inficiatus ſit, ſe fidejuſſiſſe [illegible] (5) ſi quis cum [illegible] fidejuſſerit, [illegible] (6) ſi quis fidejuſſerit & poſtea minor ex poſtfacto, tanquam confidejuſſor acceſſerit, licet curatorem non habeat, quia hic tum per reſtitutionem in integrum eximitur obligatione [illegible] (7) ſi renunciatum ſit huic beneficio, [illegible] *de paſt.* [illegible] *Cl.* [illegible] vel tacite, e. g. omittendo [illegible]

* (3) *CEDENDARUM* actionum, quod conceſſum eſt fidejuſſoribus, ut ipſi ſolvere parati, a creditore ceſſionem omnium actionum perſonalium & realium, [illegible] *C. h.* creditori competentium petere poſſint.

Cauſa eſt partim cedentis [illegible] *de* [illegible] partim ceſſionis neceſſitas, cum ille alias [illegible] haberet contra confidejuſſores ſuos, ſi ſolidum ſolviſſet [illegible] *C. h.* [illegible]

Datur fidejuſſoribus (quatenus illud hic conſideramus) qui parati ſunt ſolvere integrum debitum [illegible] *C. h.* [illegible] licet [illegible] [illegible] *Obſ.* [illegible] *C.* [illegible] *de paſt.* Contra creditorem [illegible] *C. h.* Operatur hoc beneficium exceptionem, quæ eſt tantum dilatoria; poteſt tamen opponi etiam in ipſo executionis termino, [illegible] *h.* imo etiam *poſt ſolutionem*, [illegible] *de ſolut.* [*Diſſ.* [illegible]] niſi cum proteſtatione de cedendis actionibus fuerit facta, [illegible] *de ſolut.* [illegible] Hac ceſſione * facta, fidejuſſor utitur actionibus ceſſis, adverſus principalem debitorem, & contra confidejuſſores, [illegible] *C. h.* & quidem contra hos, ad illorum *partes viriles* [illegible] non etiam ad [illegible] quas ipſe fecit, nam fidejuſſor hic agit ex perſona creditoris, cui hoc nomine actio non competebat. *Carpz.* [illegible]

* non facta fidejuſſor ſolvens, contra fidejuſſorem actionem *nullam habet*, [illegible] (*ut ſup. Cl.*) Con-

Contra principalem debitorem tamen habet actionem * mandati, ſi ſe obligavit, ejus mandato, 6. pr. l. 10. §. 11. mandat. expreſſo vel tacito e. g. ſi fidejuſſerit pro debitore præſente & tacente. 6. §. 2. l. 18 mandat. * negotiorum geſtorum, 4. pr. l. ſi hoc mandato fidejuſſerit pro abſente amico: 20. §. 1. mandat. ſi verò quis pro contradicente fidejuſſerit, *nullam habet actionem*, (10) & donare videtur. *arg. ſ. C. de N. G. L. 40 mandat.*

Competunt autem hæ actiones tum demum, ſi fidejuſſor aliquid ſolverit, *citra ſuam culpam* (11) (e. g. ſi non omiſit exceptionem ſibi competentem, 10. §. 12. mandat. aut appellationem, 10. C. mandat.) aut etiam ſi nihil ſolverit, ſi [1.] creditor fidejuſſorem remunerandi, vel ipſi donandi animo debitum *acceptum tulit* (12) 10. §. 13. mandat. [2.] ſi principalis debitor incipiat bona ſua dilapidare, tum enim ad hoc agere poteſt fidejuſſor, ut ipſe liberetur ab obligatione: 10. C. *mandat.* [3.] Si debitor principalis *diu* (13) diſtulerit ſolutionem, tum enim fidejuſſor petere poteſt: ut exoneretur. 38. §. 1. *mandat.* [illegible] Ad omne illud, quod fidejuſſori fidejuſſionis nomine abeſt, etiam quoad expenſas & *uſuras*. (14) §. [illegible] etiam ex æquitate *ſine mora*, (15) e. gr. ſi pecuniam, quam ſolvit à proprio debitore exegit, quæ uſuras ex ea præſtabat. 19. §. 4. *de N G L.* 12. §. 9 *mandat.* non etiam ad uſuras maximas, licet ipſe fidejuſſor à Judæo pecuniam, quam ſolvit, accepit ſub *maximis* (16) uſuris. *arg.* 10. §. 12. *L.* 39. *mandat.* [illegible]

Fidejuſſio extinguitur (1.) extinctâ principali obligatione, ipſo jure, 43. *de ſolut.* e. gr. novatione, 4. h. non etiam, ſi principalis debitor obligatione tantum exemtus ſit per reſtitutionem in integrum, 13 *de minor.* aut per *depurationem* (17) *ſ. de duobus reis.* [2.] Lapſo tempore, ad quod quis ſe obligavit, cum hac expreſſa proteſtatione, quod ultra id obligatus eſſe nolit: tum enim fidejuſſori datur, exceptio pacti: 44. §. 1. *de O. & A.* Si verò ſimpliciter ſe quis obligavit *ad certum tempus*, (18) eo elapſo non liberatur, ita tamen, ut ad id, quod poſt tempus obligationi accedit, non teneatur. 7. *C. de bon. vid.* [illegible] *C.* [illegible] 38. §. 1. *ff.* [illegible]

## *Notæ variorum*

(1) [*Accreditorem*] Quia ſic [illegible] *Brunn.* [illegible]

(2) [*Fidejuſſor*] Differt a *Sponſore*, [illegible] (3) *ab Expromiſſore*, [illegible] (3) *A Mandatore*, [illegible]

[illegible] At verò *Fidejuſſor* [illegible]

(5) [*Hypothecas* [illegible]] E. gr. [illegible] Contrà [illegible]

[illegible]

(4) [illegible]

[illegible]

5 [illegible]

6 [illegible]

17 [illegible]

18 [illegible]

(9) [illegible]

(10) [illegible]

(11) [illegible]

[illegible]

[illegible]

(12) [illegible]

(13) [illegible]

(14) [illegible]

(15) [illegible]

(16) [illegible]

(17) [illegible]

(18) [illegible]

(19) [illegible]

(20) [illegible]

(21) [illegible]

(22) [illegible]

(23) [illegible]

[illegible]

(24) [illegible]

(25) [illegible]

(26) [illegible]

(27) [illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

(37) [illegible]

(38) [illegible]

(39) [illegible]

(40) [illegible]

(41) [illegible]

(42) [illegible] Quia [illegible]

(43) [illegible]

(44) [illegible]

(45) [illegible]

(46) [illegible]

(47) [illegible] Vel [illegible]

(48) [illegible]

[illegible]

# TITULUS II.

# De novationibus & delegationibus.

*Junge L. 8. C. tit. 42.*

Novatio [a] eſt actus, quo vetus obligatio aboletur, & prius debitum in aliam D
A novam obligationem transfunditur. 1. pr. hæc novatio tanquam genus analogicum dividatur * in neceſſariam 29. h. quæ fit litis conteſtatione; 3. §. 11. de pecul. nam hæc propriè novatio non eſt, (nam hic actio prior manet ſalva, [b] [illegible] de fidejuſſ. [illegible] de pigner. [illegible] de peregr. (Liberatio hic tantum fit quæ incipiente. [c] dd. LL.) cum qualitatibus & privilegiis prioris acceſſoriæ obligationis, [illegible] h. nec fidejuſſores, aut pignora liberantur, dd. LL.) licet prior obligatio novas qualitates accipiat: ſic fit ex temporali perpetua, & in heredem transitoria, [illegible] de O. & A. indeque datur nova actio, rei ſc. judicatæ, [illegible] de re judicata. [illegible] & ſiſtuntur [d] uſuræ obligationis in judicium deductæ [illegible] C. de uſuris rei judicat. vid. Strow. Exerc. 47. th. 12.
B * voluntariam, quæ eſt actus, quo per præcedentem interrogationem, & ſubſequentem congruam reſponſionem animo novandi factam, prior obligatio ipſo jure, [illegible] quib. mod. obl. toll. L. 1. h. tollitur, & nova in ejus locum ſubſtituitur.

D Fit vel nova perſona * interveniente. §. 3. I. quib. mod. obl. toll. & priore debitore * ſciente & mandante, vel ratihabente; & tum dicitur [illegible]
DELEGATIO [e] 11. h. [illegible] 17. 22. h. * * ignorante & invito. [f] [illegible] inſ.
C * non interveniente, quæ fit inter debitorem & creditorem. [illegible]
§. 3. I. quib. mod. obl. tollitur. Fit (de Jur. Civ.) interrogatione, & congrua in continenti ſecuta reſponſione, §. 3. I. quib. mod. toll. obl. [illegible] h. hodie etiam pacto & conſenſu, utcumque declarato, [illegible] animo novandi facto, [illegible] h. qui expreſſis verbis eſt exprimendus, [g] [illegible] I. quib. mod. toll. obl. (alias enim non eſt expromiſſio, ſed adpromiſſio [h] [illegible] h. hodie tamen manifeſtiſſimas conjecturas ſufficere putant. [i] [illegible]) niſi nova perſona intervenerit, quod fit in delegatione, ibi enim ſatis patet [k] animus novandi, §. 3. I. quib. mod. toll. obl. neque hoc in caſu uſpiam requiruntur præciſè verba. [illegible] (Obſ. [illegible] [l] (vid. [illegible] d. l.) [illegible])

8 Priorem obligationem * remittunt, novamque acquirunt Creditores, (non etiam adjectus [m] 10. h. nec alius pro alio, e. g. filius pro patre. 25. h. nec ſervus, quod debeatur domino, licet cauſa ſit peculiaris: ib.) qui liberam rerum ſuarum adminiſtrationem habent, 3. 20. §. 1. (non etiam pupillus, &c. dd. LL. niſi conditionem ſuam fecerit meliorem. 3. h. C
* promittendo novant, qui ſtipulantibus promittere poſſunt, licet liberam rerum ſuarum diſpoſitionem non habeant, ut ſine pupillus ſine auto- [illegible]
ri-

[illegible] qui obligatur naturaliter, ad hoc, ut prior debitor liberetur, nam et ipſe (m) eandem convenire poſſit. §. 3. *I. quib. mod. toll. obl.* [illegible]

Objectum ſunt obligationes quarumcunque rerum, [illegible] (n) naturales, civiles, mixtæ. [illegible] etiam futuræ, [illegible] ita tamen, ut novatio tum demum facta videatur, ſi naſcatur principalis actio [illegible] ſi verò obligatio principalis conditionem &c. contineat. illa exiſtente fit novatio [illegible] Adjecta etiam dies, & tum ſtatim perfecta eſt: [illegible] conditio, & tunc exiſtente demum fit novatio. [illegible]

Ea facta, tollitur prior obligatio ipſo jure. §. 3. *I. quib. mod. toll. obl.* [illegible] cum ſuis privilegiis, [illegible] & acceſſoriis, e. gr. fidejuſſoribus, pignoribus &c. [illegible] niſi aliud convenerit (o) [illegible] tum etiam retinetur prioritas temporis (p) [illegible] Licet interdum poſterior ſtipulatio [illegible] hanc exceptionem [illegible] erat oppoſita, ceſſat, (q) in perſona creditoris, cui quis delegatus eſt [illegible] Creditor amplius contra priorem debitorem agere non poteſt [illegible] licet delegatus appareat non ſolvendo. [illegible] niſi delegans ipſe tale pactum periculum in ſe ſuſceperit (r) [illegible] [illegible] §. 1. *de ſolut.* [illegible] novæ obligationis, de qua [illegible]

## *Notæ variorum*

(1) [*Novatio*] [illegible]

(2) [*Alium ſortem*] [illegible]

(3) [*Quæ conſequuntur*] [illegible]

(4) [*Adhiberi*] [illegible]

(5) [*Delegatio*] [illegible]

[illegible]

[illegible]

(7) [illegible] ] Quod [illegible]

[illegible]

[illegible]

# *TITULUS III.*

## De ſolutionibus & liberationibus.

*Jung. l. 8. C. tit. 43 l. 3. x. t. 23.*

SOLUTIO eſt naturalis ſive actualis rei debitæ præſtatio, animo obligationem tollendi facta: 40. h. Alio ſenſu dici poteſt modus obligationem diſſolvendi per naturalem & actualem rei debitæ præſtationem, animo tollendi 55. h. [illegible] *pr. [illegible]* Ficta ſolutio huc non pertinet. Cauſa efficiens

Ccc ccc ccc eſt

C eſt voluntas dantis & accipientis: Nam requiritur *translatio dominii.* [illegible]

8 *SOLVUNT* omnes qui libere adminiſtrant res ſuas. & contra *propter* C. tutor & curator [illegible] etiam alius debitoris nomine: [illegible] (ſi ſuo nomine ſolvit non liberatur debitor, & repetit ſolvens rem ſuam condictione *indebiti.* [illegible]) *NON* etiam *pupillus, ſine autoritate, [illegible] qua ſi de facto ſolverit, obligatio non tollitur, nec dominium rei traditæ tranſit: [illegible] Si tamen res ita ſoluta, * à creditore conſumpta ſit * h. t. tum liberatio ex poſt facto ſequitur, [illegible] A D

*m. ſ. tum agitur *ad exhibendum,* [illegible]

*Si apud creditorem periret, tum creditori perit, quia dominium pupillo tantum reſervatum, ne ſentiat *damnum.* [illegible] (*Diſſ. Doneſl. Alex. propter* [illegible]) non etiam b

*furioſus, minor, prodigus &c. [illegible] a

9 *CREDITORIBUS*, (qui ſolutionem recipiunt etiam *per servum,* [illegible] cui hoc mandant, vel qui juris diſpoſitione eos repræſentant, ut tutores, &c [illegible] Servo peculiari nomine. [illegible] Circa procuratorem diſtinguitur an Procuratori in rem *ſuam indifferenter poteſt ſolvi, adeò, ut concurrenti principali debitori *præferatur* [illegible] C

*alienam, conſtituto ad *negotia *generaliter omnia, rectè ſolvitur, etiam abſque ſpeciali mandato: [illegible] c D

*ſpecialiter certa, E

tum demum ſolvitur, ſi habeat ſpeciale mandatum ſolutionem *accipiendi:* [illegible] Huic ſimilis eſt *adjectus* [illegible] *ad litem, ſolvi non poteſt: [illegible] *NON* etiam ſolvi poteſt tertio, [illegible] nec falſo procuratori, [illegible] (habet tamen doli exceptionem qui ſolvit *creditoris creditori,* [illegible]) ſi ejuſmodi ſolutionem dominus poſtea ratihabuerit, liberatio ex poſt facto contingit. [illegible] nec ſolvi poteſt illi, cui dominus hoc mandaverat, ſi mandatum revocavit Liberatur tamen debitor, ſi juſte ignoravit, revocationem factam eſſe. [illegible] procuratori [illegible] ille furandi animo pecuniam acceperit eo enim in caſu nummi non ſiunt accipientis: & per conſequens ſolutio non eſt facta, nec obligatio diſſoluta: Liberatur tamen debitor ope exceptionis, ſi paratus ſit cedere domino actionem ſibi contra furem ſive falſum illum procuratorem *competentem,* [illegible]) e d

*QUI* liberam habent rerum ſuarum adminiſtrationem. hinc ſi ſolvatur pupillo, minori, &c ſine curatore, obligatio non extinguitur, [illegible] Exceptio doli tamen competit debitori, ſi minor, &c. inde locupletior factus ſit, aut nummos adhuc habeat: [illegible] Novo Jure etiam requiritur decretum judicis, [illegible] nec ſufficit judicialis *quietantia,* [illegible] ut debitor pleniſſime ſecuretur, [illegible] ut *pupillo rectè poſſit ſolvi, & obligatio extinguatur: [illegible] quod ſi fuerit omiſſum, debitor ipſo jure non liberatur, [illegible] nam hoc requiritur, tanquam forma *eſſentialis,* [illegible] E

*Tutori rectè ſolvitur, [illegible] *propter indemnitatem minoris.* (*Diſſ.* [illegible]) E

[illegible]) niſi ſolvantur [illegible] & alteri pauperum amorum, centum ſolidos non excedentes. [illegible] non [illegible]. & l. [illegible]

Res debetur * ipſa, [illegible] C. de ſolut. [illegible] (niſi (1) ea ſolvi non poſſit, tum enim æſtimatio accipienda: [illegible] Aut hoc aut debuo. [illegible] ſi pecuniam non habeat debitor, res alias accipere debet creditor, quarum æſtimatio ſuo lucro eſt vel damno [illegible] Oder auf den Fall [illegible] pecunia tamen in alio nummorum genere [illegible] modo aliud non fuerit conventum. [illegible] der [illegible] aut creditor inde non lædatur, [illegible] quod ſi, ſi in magna ſumma offerantur de minuta pecunia pluſquam XXV. fl. [illegible] der [illegible] (2) factum ſit in obligatione: [illegible] (3) vel tantum poteſt alia in ſolutum dari.)

* In eadem quidem & bonitate, qua fuit tempore contractus, [illegible] (licet mutatur bonitas intrinſeca vel extrinſeca [illegible] fuerit mutata [illegible])

* Loco, [illegible] (niſi altera pars ſit contentioſa, [illegible] aut ab initio aliud ſit conventum. [illegible])

* Et quidem propria in obligatione dandi: [illegible] alienam enim dans, tum non liberatur. [illegible] niſi res ſolutæ à creditoribus fuerit conſumptæ, [illegible] aut bona fide conſumta. [illegible] Si duo alternative debentur, tum regulariter debitor eliget, [illegible] utrum ſolvat. [illegible] niſi illorum unum periit, ejus facto. [illegible]

H Solutio fieri debebit convenienti * tempore [illegible] & in debito puro, debitor quidem præſenti die ſolvere debet, prædes tamen provideat, ne creditor ſtatim cum [illegible] veniat. [illegible] Si tempus ſolutionis arbitrio debitoris fuerit relictum, ab herede demum eo mortuo [illegible] ille autem ſemper poteſt, ſi vult ſolvere, [illegible] Item ante tempus [illegible] conventum offerens pecuniam, & creditore ſine juſta cauſa illud recuſante, [illegible] deponens, liberatur, [illegible] niſi diem creditoris [illegible] gratia adjectum ſit [illegible] aut cautum ſit, ut interpellatio ab utraque parte certo tempore fiat, [illegible] aut debitor velit pro monetæ probæ, ſolvere reprobam, morāque [illegible]

h. * loco, & quidem in illo, de quo conventum, [illegible]



[illegible]

*a. pr. vid. 9 C. de solut.* niſi neceſſitas aliud ſuadeat, *1. C. de sol. Brunn. ad. 4. d. 18. th. 39.* D. aut Creditoris nihil interſit. *arg. 38. d. R. V. 38 §. 17 de V. O. Brunn. d. l. vid. Schulz. d. l. n. 20.* Si de loco nihil actum, res fungibiles ibi ſolvuntur, ubi *petuntur.* [1] ſpecies vero ubi ſine dolo debitoris exſtiterit. *33. de judic. Brunn. d. l. th. 38. vid. Schulz. d. l. n. 19.*

E Solutione ex obligatione dandi facta, transfertur dominium vel condicio uſucapiendi, *46. de usurp.* & obligatio *extinguitur ipſo jure* [2] *pr. I. quib. mod. toll. obl. 91. §. 4. de solut. vid. 54. §. 1. d. O. & A. 38. §. 1 de solut.* (hinc heres ingreſſum impedit, [3] *Cu. 1. c. 3. d. 13. 14.* & ad chirographum ejus debiti nomine datum, datur *condictio sine causa* [4] *f. C. de solut.*) etiam quoad *accessorias obligationes* [5] rerum & perſonarum. *43. de solut. pr. I. quibus mod. toll. obl.* Si ſolverit fidejuſſor, idem eſt, ac ſi ſolviſſet principalis debitor *pr. I. quibus mod. toll. obl. Faber in C. tit. de fidejuſſ. d. 17. Bach. & Vinn. ad d. pr. I. (obſ. 59.* [6] *§. 1. L. 93 de solut. Cu. 2. c. 27. d. 14. n. 15.)* Mandatarius proprio nomine, tum debitor liberatur tantum ope exceptionis, *45. mandat. vid. Bach. & Vinn. ad d. 3. pr.* Alias pro alio ignorante aut *invito.* [7] *vid. supr. S.* tum etiam ipſo jure liberatio contingit, *pr. I. quibus mod. toll. obl 23. 40. 53. h. 39. de N G. Obſ. 49.* [8] *de R I.* Regreſſum autem contra principalem * habet, qui ſolvit I

* ex mandato: hic enim habet actionem mandati. *6. §. 2. l. 18. mandat.* K

* pro ignorante: hic enim habet *actionem negotiorum geſtorum*, [9] *20. §. 1. mandat.* K.

*1. 1. d. N. G.* * non habet, qui pro L.

invito ſolvit, nam hic *donare videtur.* [10] *40. mandat. f. C. de N. G.* Ex pluribus cauſis obligatus, ſi certam pecuniam ſolvat, *vid. 1. pr. L. 5. h.* generaliter, tum *in arbitrio creditoris* [11] eſt, cui debito acceptum ferat: modò in id conſtituat, quod debitor veriſimiliter ſuiſſet ſoluturus: *1. de solut.* hinc ſemper ſolutum creditur in duriorem cauſam, *3. 5. pr. 97 de solut.* e. g. pro qua acceſſit pœna, fidejuſſor &c. quod quis proprio nomine debet &c. *4. 5. pr. 97* aut ſi cauſæ ſunt ſimiles, in antiquiorem *5 pr.*

pr. ſi tamen uſuræ etiam debeantur, tum hæ *ante omnia* [12] ſolutæ videntur, *Cu. 2. c. 20. d. 14. 17 §. Poſter. 1 q. 21 n. 7. & 8. Menoch. 3. præſumt. 136. propter. 5. §. f. h. 1. C. h.*

Solutionem allegans *illam probet* [13] *f. C. h. 7 de C. E. V. 9 §. f. de castr. peculio.* e. g. per *Apocham*, [14] *14. C. de solut. testes duos.* [15] *Sande, 1 decis. Friſ. tit. 10. def. 1. Gravetto. ad L. 18. C. de teſt.* conjecturas, e. g. ſi chirographum ſit penes debitorem, *arg. 14. C. h.* aut apud creditorem quidem, ſed ſciſſum vel *cancellatum.* [16] *24. de probat. Cu. 2. c. 20. d. 12. plura* [17] *vid. ap. Menoch. decis. Florent. & Sard. decis. 105.*

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## *Notæ variorum.*

Nummi in vimus alienationem, quam qui debitum in solutionem accipere tenetur.

In ſolutione dominium et quandoque unicuique dantur.

(1) [*Alienatione non debent*] Contra aliandum eſt, quam a nemo juris obligatione ſui ſolvere [illegible] ſolvere. [illegible] wirkliche Bezahlung, [illegible] quam quis debuit, ne ſolutionem accipere non tenetur. *Berg.*

(2) [*Transfertur dominium*] Hoc proprie ad illum caſum pertinet, ubi res pro pecunia in ſolutum datur, quo caſu res quaſi venditur videtur, *l. 24. ff. de pignorat. act.* verdiret vero libérum, ſi ſervus, ut non habere [illegible], aut ſi [illegible], pariter conditionem. *Berg.*

(3) [*Extinctio earum*] Jus ſolvendi dependet à poteſtate alienandi. Liberatio tamen obſtat, quam ſoluta dominii, quae in ſolutione ſemper [illegible] commodum conſervare, dum ab obligatione liberatur. *Berg.* [illegible] *arg. l. 42. ff. h. t.* [illegible] *arg. l. f. C. ad L. Juliam Majeſt. Menchen.*

(4) [*Ad. ipſ.*] Si forte pupillus ipſe debeat. *Berg.*

(5) [*Indebitae*] Nondum noſ [illegible] ſit obligatus non fuiſſe. Nam qui [illegible] ſolvit, donaſſe videtur, *l. 53 ff. de R. J. Berg.*

(6 [*Obſ. 44.*] Loquitur h. l. de eo caſu, ubi is qui ſolvit, aliud, non quod ipſe deberet, ſed alienum nomine ſolvit, tum enim obſtat conditio; Sunt

Qui pro alio ſolvere poſſit vel non.

[illegible]

(7) [illegible]

(8) [illegible]

(9) [illegible]

(10) [illegible]

(11) [illegible]

(12) [illegible]

(13) [illegible]

(14) [illegible]

(15) [illegible]

(16) [illegible]

(17) [illegible]

(18) [illegible]

(19) [illegible]

(20) [illegible]

[illegible]

(21) [illegible]

(22) [illegible]

(23) [illegible]

(24) [illegible]

(25) [illegible]

(26) [illegible]

(27) [illegible]

(28) [illegible]

(29) [illegible]

(29) [illegible]

(30) [illegible]

(31) [illegible]

(32) [illegible]

(33) [illegible]

(34) [illegible]

(35) [illegible]

(36) [illegible]

(37) [illegible]

(38) [illegible]

(39) [illegible]

(40) [illegible]

(41) [illegible]

tem mihi præſtare & poteſt, & debet. *propter mandatum enim ſuum & ſuo nomine, aliaque tenebatur*, quod tectus eſt, ſi ſolutio facta ſit à fidejuſſore, & in ſolvendo de cedendis actionibus nihil cautum. *Vinn. ad pr. J. quib. mod. toll. obl. n. 11.*

(42) [*Ferunt*] Adeo, ut creditore recuſante pecuniam accipere, tertius ille eandem deponere, & ita debitorem liberare poſſit *CC. Saxon. p. 4. c. 1. §. 4.* *Stryk.*

(43) [*Obſ. 69.*] Beneficium hoc non tantum concernit invitum debitorem, ſed & ſimul creditorem. *Stryk.* Vel jus vel loqui de beneficiis, quæ à lege conceduntur, ibi. *beneficium*; Vel Regulam fallere, quando ſimul de tertii alicujus intereſſe agitur, ut hic creditoris cujus omninò intereſt, ſolutionem fieri. *Berger.*

(44) [*Abſentem negotiorum geſtorum*] Quia utilitatem ejus promovet. *Stryk.*

(45) [*Donare videtur*] Niſi ſibi cedi curet actiones. Ex jure ceſſo tamen etiam contra invitum agi poteſt, nec hanc ceſſionem prohibere potuit debitor, Quia non ex ejus, ſed venditoris arbitrio dependet. *Stryk.*

Pro invito ſolvens, donare cenſetur.

(46) [*In arbitrio creditoris eſt*] Si vero ab initio ſtatim dicat, in quam cauſam ſolutum imputare velit, ejus voluntas ſtandum; Ni ſi creditor ex venditione pignoris ſibi ſolverit, ubi in arbitrio creditoris eſt in quod velit debitum illud pro lubitu imputare *l. 101. §. 1. ff. h. t.* *Stryk.*

Debitor plures ſummas debens ſi quid ſolvat, in arbitrio creditoris eſt, cui debito hoc imputare velit.

(47) [*Ante omnia*] Hoc tamen fallit, ſi in concurſu creditorum ſolutio à debitore facta, ubi in uſuras referenda non eſt; Uſuræ enim ex gi non poſſunt, priusquam omnium creditorum ſors fuerit ſoluta. *Carpz. p. 2. c. 29. d. 17. n. 9.* *Stryk.*

Ante omnia uſuræ ſolvendæ.

(48) [*Illum probet*] Quia eſt facti. Unde non præſumitur, ſed probanda eſt, probatur autem optime per Quitantiam Creditoris. *Carpz. p. 2. c. 29. d. 13.* *Stryk.*

(49) [*Apocham*] Hoc pertinet notabilis caſus, quod apochas trium annorum cohærentium habens, præſumatur priorum annorum præſtationes vel uſuras ſolviſſe *l. 3. C. de Apoch. publ.* *Stryk.* De qua notandum (1) eam eſſe valere debere, eoque caſu, cum chirographum in manu habeat quia fortior eſt confeſſio ſoluta pecuniæ, quæ continetur apocha quam præſumtio, quæ ex redditione chirographi capitur (2) eandem pertinere etiam debitum incertæ quantitatis, licet ex ea de ſolutione certæ quantitatis appareat *arg. l. 6. h. t.* excipe, niſi, cauſa debiti tractum temporis habeat, veluti cum Advocatus clienti dat apocham, eaque confitetur, accepiſſe certam ſummam pro præſtito patrocinio, nam apocha intelligitur data ratione temporis præteriti, non futuri. *Berger.*

Apochas trium annorum exhibens ſequentium habens, ſolviſſe cenſetur antecedentes.

(50) [*Teſtes duos*] His verò non aliter ſolutio probatur, quam ſi ſimul etiam deponant & dicant, ex qua cauſa fuerit ſolutum. *Carpz. d. l. def. 12. n. 3.* *Stryk.*

(51) [*Cancellatum*] Tunc enim hoc voluntate creditoris factum præſumitur. Aliud, ſi penes tertium obligatio cancellata deprehendatur. Ubi ſemper dubium manet, an voluntate creditoris facta Cancellatio, cum etiam ipſo inſcio fieri potuerit. *Stryk.*

(52) [*Plura*] Sic ſi debitor adminiſtravit bona debitoris, ſibi ex illis ſolviſſe præſumitur. Donec ex redditis rationibus contrarium appareat *Menoch. l. 3. Præſ. 135. n. 12.* qui liber in hac materia utiliſſimus, ut & *Projects Tr. de Solut.* *Stryk.*

# TITULUS IV.

## De acceptilatione.

*Junge l. 8. C. tit. 44.*

Acceptilatio [1] eſt modus, quo debitori interroganti verborum obligatio à Creditore per ſubſequentem congruam reſponſionem, æquè, ac ſi ſolutio facta eſſet, remittitur. D

Non eſt *ſtipulatio*. [2] *1. §. 1. & 7. de O. & A. obſ. 27. §. 2. de pact.* N

Cauſa eſt Jus Civile. *arg. 1. loc. ait. obſ. 1. §.* [3] *f. h.* Et voluntas, declarata Jure civ. verbis: *a. 1. §. 3. ff. 1. C.* hodie *utcunque* [4] *Carpz. p. 2. c. 19. d. 17.* C

A Acceptum * rogant, debitores ipſi, (nam eſt actus legitimus. *77. de R. J.* non etiam *tutor*, [5] procurator &c. *13. § 10.*) cujuscunque ſint conditionis, modo de Jur. civ. verba eloqui poſſit, licet liberam rerum ſuarum adminiſtrationem *non habeat*, [6] *11. h. 2. h.* etiam tertius, qui per novationem alienam obligationem *in ſe recepit*, S

*acceptil.* [17] *19. §. 10. h.* * *jure c.* [1] curatores ipſi, eſt enim actus legitimus, *77. de R. I. 51. §. 10. h.*) etiam, qui poſt annos auxorem tales facti ſunt: *11 §. 10. h.* modo liberam rerum ſuarum adminiſtrationem habeant; non etiam tutores, &c.

Obligatio (pura vel non pura, pendente tamen conditione pendet etiam acceptilatio *12. h.*) verbis contracta: *1. §. 3. h. §. 1. quib. mod. obl. toll.* ſi tamen alia obligatio accepta fuerit, tum debitor habet exceptionem doli mali, *vel pacti,* [2] *19. h.* nam *invalida* [4] acceptilatio in *vim taciti pacti* [5] habet. *8. pr. h. vid. 1. §. 1. 2. de V. O. 1. §. 4. de conſt. pec. junct. 27. de O. & A.* O

Liberat *ipſo jure,* [10] *a. 3. C. h. 5. h. 7. §. 1 de liber. legat. §. 1. I. quib. mod. toll. obl.* E

Non recipit conditionem, nec diem, quia eſt *actus legitimus* [11] *77. de R. J.* A hinc acceptilatio *ſub conditione* [12] eſt ipſo jure nulla, *4. 5. h.* niſi illa conditio *tacite* [13] tantum inſit, *12. h. v. 103. de R. I.*

*EXTINGUITUR ETIAM OBLIGATIO IPSO JURE:*

(1.) *Solenni* OBLATIONE, [14] obſignatione, & depoſitione pecuniæ debitæ, I qui actus dicitur depoſitum juris, *Mev. de contract. tr. de depoſ. rubr. de diverſ. n. 14.* & eſt modus, quo per ſolennem & legalem oblationem, obſignationem, & de- D
B poſitionem rei debitæ, obligatio ipſo jure tollitur. * Offertur omnibus, quibus P recte ſolvitur etiam *adulto* [17] (*Diſſ. Donell.*) *Schulz. tr. de obl. & obſign. c. 2. n. 6. 8.* non vero *hodie ſemmas,* [18] abſque curatore, *Schulz. d. l. n. 14.*

b. * Offerunt, qui recte ſolvunt, etiam tertius invito debitore, *Schulz. d. l. n. 3.* Res debitas, *9. C. de ſolut.* (interdum O tamen etiam aliud pro alio *poteſt offerri,* [19] *vid. tit. de ſolut. O. Schulz. d. l. c. 3. n. 7.*) In debita quantitate, (totam ſc. rem, cum uſuris *19. C. de uſur.* partialis oblatio non valet, *Cr. 5. Reſ. 99. Schulz. d. l. c. 4. n. 45. 46.* niſi *certis in caſibus,* [20] *vid. tit. de ſolut. O. ibi DD.*) & debita qualitate, *5. d. R. C. tit. de ſolut. Cr. 5. Reſ. 99. n. 15. & Reſ. 105.*

C *Schulz. d. l. c. 4. n. 7.* Formale hujus negotii ſunt concurrentes * (1.) oblatio legiti- E ma, ſc. l. (α.) *realis* [21] *9. C. de ſolut. 19. C. de uſur. Schulz. d. l. c. 4. n. 2. vid. Cr. 5. Reſ. 99. n. 4. 5.* quomodo immobilia *offerantur?* [22] *vid. Bocer. cl. 4. D. 19. th. 57.* facta (β.) opportuno loco, *9. C. de ſolut. Cr. 5. Reſ. 99. n. 12. 13. Schulz. tr. de oblat. & obſign. c. 4. n. 19.* (γ.) opportuno tempore, *arg. 39. de ſolut. Schulz. d. l. n. 22. Cr. d. l.* (δ) *teſtato:* [23] *6. C. de uſur. Schulz. d. l. n. 20.* hoc tamen requiſitum non tam ad formam,

c. quam probationem pertinet. *Carpz. d. l. n. 2.* * (2.) obſignatio legitima, ſc. facta (α.) præſente adverſario, vel legitime citato *abſente.* [24] *6. C. de uſur. arg. 47. pr. de re jud. Schulz. d. l. n. 28. Cr. d. l. n. 22. 24.* (β) *præſente judice,* [25] *Schulz. d. l. n. 30 Cr. d. l. n. 25. Vid. diſſ. de depoſ. jur. th. 17. & ſeq.* ubi duo hæc requiſita ad forum Saxon. reſtringuntur (γ.) ita, ut conſtet, rem totam depoſitam: *arg. 9. C. de ſolut. 19. C. de uſur. Schulz. d. l. n. 30. Carpz. d. l. n. 30.* (δ.) in ciſta vel in *ſacculo,* [26] &c. *Schulz. d. l. n. 32. Carpz. d. l. n. 29.* * (3.) Depoſitio legitima, facta in loco publico à judice aſſignato, ut ædes ſacræ, curia, &c. hodie plerumque in *judicio ucu.* [27] *19 C. de uſur. 1. §. 36. depoſ. Schulz. d. l. n. 31. Cr. d. l. n. 28.* Debitor *liberatur* [28] ipſo jure: *19. inf. C. de uſur. L. 9. C. de ſolut. 1. §. 36. depoſ.* E *Cr. 5. Reſ. 100. n. 2 Schulz. d. l. c. 5. n. 3. vid. L. 19. C. de ſolut. 5. C. de luition. pign. 72. pr. h. 105. de V. O.* (*Diſſ. Bach. ad Wiſenb. t. t. de ſolut. in pr.*) Creditor habet utilem actionem contra depoſitarium, judicem ſcilicet, ad res depoſitas conſequendas: *19. C. de uſur.* non autem fit *dominus rei,* [29] *arg. 19. C. de uſur. 15. de O. & A. Diſſ. Carpz. 5. Reſ. 100. n. 11.* licet periculum *ad eum ſpectet:* [30] *Schulz. d. l. c. 5. Cr. 5. Reſ. 100. n. 9. 10.*

*Boec. cl. 4. D 19. th. 17.* tum per hanc oblationem conſtituitur in mora, unde etiam uſuræ amplius non currunt. De oblatione *verbali & reali*, [1] ſed mixto ſolenni, *vid. Schulz. d. l. c. 6. 7.*

H (2.) Mutuo *DISSENSU*, *§. f. I. quib. mod. toll. obl.* qui eſt modus, quo per contra-
D riam debitoris & creditoris voluntatem obligatio, conſenſu contracta, ipſo jure
C tollitur. Non ſufficit *unius diſſenſus*, [13] *5. C. d. O. & A.* (*licet princeps* [14] hoc jubeat, *5. C. de reſc. vend.* aut altera pars duplum offerat: *6. C. de reſc. vend.*) niſi certis
O in *caſibus*, [15] *23. & ſeq. mand. 14. pro ſocio 14. comm. divid.* Obligatio *conſenſu contracta*, [16] *35. de R. I. 80. de ſolut.* cujus res eſt adhuc integra, aut in priſtinum ſtatum reducta: *58. de pact. 1. C. quand. lic. ab emt. reced.* licet arrha data ſit: *2. C. quand. lic. ab emt. reced.* Contraria tamen voluntate etiam diſſolvuntur obligationes *naturales* [16] tantum, *95. §. 4. de ſolut.* & quædam ex delictis, ut actio injuriarum, *furti*, [17] &c. *17 §. 1. 27. §. 2. d. pact. 17 §. 6. d. injur.*

III. (3.) *CONFUSIONE*, [18] quæ contingit (1.) ſi jura creditoris & debitoris in eandem perſonam conciderint. (*Obſ. 6.* [19] *1. C. ad L. Falc.*) *95. §. 2. de ſolut. Vid. 21. §. 2. de fidejuſſ. 43. in f. de ſolut.* hodie tamen propter beneficium inventarii *ſalvæ manent* [20] actiones inter defunctum & heredem, *f §. 9. C. de jur. delib.* (2.) *Si duæ obligationes* [21] unius rei in unam perſonam collatæ fuerint: modo illæ obligationes ſint diverſi generis, e. gr. principalis ſuccedat fidejuſſori, *vel contra* [22] *93. §. 3. 95. §. 2. de ſolut.* nec plenior ſit, e. gr. fidejuſſoris obligatio, quam principalis, *Carpz. 2. c. 18 d. 13.* nam ſi obligationes illæ unius ſint generis, e. gr. unus fidejuſſor alteri ſuccedat, tum *ambæ ſubſiſtunt*, [23] *13. de duob. reis. 21. §. de fidejuſſ.*

IV. (4.) *COMPENSATIONE*, *de qua ſupra lib. 16.*

V. (5.) *INTERITU*, rei in ſpecie debitæ, ſine culpa aut mora debitoris, *23. de V. O. Vid. 11.* [24] *C. de reb. cred. 23. de V. O. juncl. 82. §. 1. & 33. §. 7. eodem.*

VI. (6.) *CONCURSU*, duarum cauſarum lucrativarum unius rei, in unam perſonam, *17. de O. & A. 83. §. 6. d. V. O. 61. de ſolut. Boecr. cl. 4. D. 19. th. 23*

VII. (7.) *CAPITIS*, maxima & media diminutione: *de quibus vid. tit. de capit. minut.*

IIX. (8.) Interdum etiam *MORTE* * debitoris, e. g. obligationes ex de delicto ve- D
*nientes* [25] niſi lis cum defuncto fuerit *conteſtata* [26] *vid. tit. de O. & A.*

* creditoris, ut ſunt obligationes, quæ oriun- d.
tur ex injuria vel ſimilibus cauſis, meram vindictam *continentibus*. [27]

IX. (9.) Præſcriptione, *de qua ſupra.*

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*Notæ variorum.*

Obligatio [illegible] [illegible] [illegible] [illegible]

(1) [*Acceptilatione*] [illegible] obligationem *conſenſu gratuito* remittere, quæ [illegible] liberationem [illegible] Germanis eſt. Sed *Romanis* [illegible], certa ſolennitate *acceptilationis*, [illegible] per verba [illegible] [illegible] [illegible], [illegible] ſingularis, vel [illegible], vel [illegible] [illegible]. Ex hoc genere eſt (1) [illegible], quæ [illegible] [illegible] (2) quod [illegible] [illegible] ſtipulatam. (3) Jure Civili. (4) quod [illegible] à debitore [illegible] creditor [illegible] debet (5) [illegible] obligationem verbalem [illegible]. (6) [illegible] [illegible], [illegible] [illegible], debitor [illegible] obligatio [illegible], [illegible] [illegible]. quod (7) obligationem [illegible] ipſo jure (8) [illegible] [illegible] [illegible] [illegible]. Verum in *Germania* [illegible] [illegible] *Romana* [illegible], ac [illegible] [illegible] [illegible] [illegible], adeo ut pactum de non petendo, acceptilatio, condonatio et [illegible] apud nos ſint ſynonyma. *Tittm.*

(2) [*Stipulatio*] Sed ſi per ſtipulationem, [illegible] ſtipulatio [illegible] eſt [illegible], quæ [illegible] acceptilatio: Et hoc ſenſu [illegible] [illegible]. *l 27* Pactum [illegible] [illegible] [illegible] [illegible] ſit, quam ſtipulatio, [illegible] [illegible] eſt [illegible] [illegible]

[illegible]

(3) [illegible]

(4) [illegible]

(5) [illegible]

(6) [illegible]

(7) [illegible]

(8) [illegible]

(9) [illegible]

(10) [illegible]

(11) [illegible]

(12) [illegible]

(13) [illegible]

(14) [illegible]

(15) [illegible]

(16) [illegible]

(17) [illegible]

(18) [illegible]

(19) [illegible]

[illegible] (20.) [illegible]

[illegible] (21) [illegible] Ad quem [illegible]

[illegible] (22) [illegible]

(23) [illegible]

[illegible] (24.) [illegible]

[illegible] (25.) [illegible]

(26.) [illegible]

[illegible] (27.) [illegible]

(28) [illegible]

(29) [illegible]

(30.) [illegible]

(31.) [illegible] Verbalis [illegible]

(32.) [illegible]

(33.) [illegible]

[illegible]

(34) [illegible]

(35) [illegible]

(36) [illegible]

(37) [illegible]

(38) [illegible]

(39) [illegible]

(40) [illegible]

(41) [illegible]

[illegible] duplex, [illegible] obligatio; [illegible] duplici obligatione [illegible], [illegible] hanc limitationem [illegible] interpretes. Licet verò hæc ratione [illegible] temperetur, attamen ambages [illegible] hanc ſunt [illegible], cum [illegible] ſimpliciter negare, [illegible] quod *Romanos* [illegible] ut plures obligationes & actiones ad eandem ſequam [illegible], [illegible] in caſu præſenti, [illegible] *l. 93 § 3 de ſolut. Titius.*

Fidejuſſor [illegible] [illegible] non habet beneficium [illegible].

(42) [*Vel contra*] Fidejuſſor cum principali ſuccedens non amplius, ut fidejuſſor, ſed ut principalis conſideretur, & hoc [illegible] beneficium [illegible] & diviſionis. *Struv.*

(43) [*Ambo ſubſiſtunt*] Sed non [illegible] rum ſuccedentium, ſed majorem creditoris, qui hoc caſu à [illegible] ſuccedente duplicem [illegible] exigere poteſt. *Struv.*

[illegible] [illegible], [illegible].

(44) [*Vel* [illegible]] In hoc *L. 11. C.* [illegible] de debito quantitate quod [illegible] non poteſt. Cum [illegible] non liberetur. Idem verum eſt, ſi [illegible] poteſt, [illegible] debitum *L. 92. pr. ff. de ſolut. Struv.*

(45) [*Venerunt*] Ut & [illegible] Reliquæ obligationes ex contractu [illegible] ut nunquam exſpirent. *Struv.*

(46) [*Conſuſione*] Vel aliquid ad heredem perveniet. *Brunnem. de Concurſu Creditor.* & *Tractat. Action. ſect.* [illegible] *Struv.*

(47) [*Concurrentibus*] [illegible] non [illegible]. *Struv.*

# *TITULUS V.*

## De prætoriis ſtipulationibus.

D **P***rætoriæ ſtipulationes* (1) (1.) ſunt, quæ *a mero* (2) prætoris officio proficiſcuntur: *5. de V. O. §. 2. I. de diviſ. ſtipul.* (*vid. ſupr. tit. de V. O, 1.*) hinc *diſtinguuntur* (3) à judicialibus *§. 1. I. d. t.* & communibus: *5. pr. de V. O.* (*vid. ad tit. de V. O.*)
D (2.) ſunt illæ ſtipulationes, quæ Edicto prætoris interponi jubentur, & ex eodem certam formam habent: ut ſunt *L. 1. h.* * Judiciales, quæ propter judicium A
D interponuntur, ut ratum ſit, ut judicatum ſolvi, & ex operis novi nunciatione, *1. §. 1. h.* * Cautionales, quæ ipſam rem cautiorem reddunt, & inſtar actionis ſe a
D habent, quatenus à magiſtratu quaſi per actionem impetrantur, & quaſi nova remedia ad veterem actionem *accedunt*, (4) ut ſtipulationes de legatis, de tutela, ratam rem haberi & damni infecti: *5. §. 2. de V. O. junct. L. 37. §. 1. de V. S. Weſenbeck. h. tit. 24. L. 6. 33. 44. pr. de damn. infect. 13. de S. P. V.* Sic *novant actionem* (5) ex teſtamento, ſtipulatio Legatorum, &c. *21. de acceptil.* & actionem tutelæ, ſtipulatio rem pupilli ſalvam fore: *6. pr. de novat.* *condictionem ante competentem, ſtipula-
D tio rem ratam haberi, *f. tit. rem rat. hab. Zaſ. h. n. 4.* * Communes quæ partim a propter judicium, partim propter rem ipſam fieri ſolent: ut ſunt ſtipulationes *judicii ſiſtendi cauſa.* (6) *1 §. 3. h. 10. §. 2. ſi quis cantion. jud. ſiſt. Cujac. ad L. 5. de V. O.* Si B prætor exigit * ſatiſdationem in ſpecie, fidejuſſores *requiruntur.* (7) e. g. in quantitate *incerta.* (8) *a. 7. h. Struv. Exerc. 3. th. 21.*

* cautionem in genere, tum ſufficit aliquando nuda repromiſſio b *vid. 1. §. 4. 7. 8. h.*

### *Notæ variorum*

Si fidejuſſor non ſolvendo ſunt [illegible].

(1) [*Prætoriæ ſtipulationes*] Omnes ſunt neceſſariæ, non voluntariæ ſive conventionales, unde ſi cautum eſſe deſierit, ſive culpa ſtipulatoris fidejuſſoribus ſunt ſolvendo non exiſtentibus denuo præſtanda ſunt. *l. 4. ff. h. l. 4. ff. ut in poſſ. leg. ſerv.* Conventionales non item. *arg. l. 10. § 1. ff. qui ſatisd. cog.* [illegible] *Huber. ff. h. poſt.* [illegible] [illegible]. Conventio ex diſtinctione [illegible] & [illegible], quod omnes [illegible] obſervant, ut [illegible] eſt, [illegible] quod ut interpoſitis, [illegible] ſolum [illegible]. Quatenus [illegible]

non cautio præſtanda ſit, ut hæ [illegible] debent magis [illegible] quæ [illegible] modum præſtitit, nec [illegible] *perſonam*, quæ [illegible] [illegible], deſignat, quæ [illegible] in re, [illegible] reipublicæ magis, quam *domino* ſpectari debent. Diviſio prima, quæ hæ [illegible], hodie ceſſat, [illegible], nec [illegible] (non [illegible] cautionem à ſine ſint [illegible], ab [illegible] verò [illegible], [illegible] ſubordinandæ ſibi ſcilicet opponantur) non hodie magis uſus eſt. *Titius.*

(2) [*Æterna*] Hæc eſt, quæ à nulla lege concluditur, ſed pro æterno [illegible] præſtantur. *Strykius.*

(3) [*Diſtinguuntur*] Hæ diviſiones hodie nullum præſtant [illegible], quia Principes & Judices eſſicerunt hodie ab eadem perſona caveatur, licet ipſa cautionum [illegible] ſint in uſu. *Da. [illegible] h. t. Strykius.*

(4) [*Arrodunt*] Et ſic [illegible] hæ cautionum ſpecies [illegible], h. e. ubi [illegible] ſalva manet, & nova ſuperinducitur, quæ quam [illegible] [illegible] poteſt. *Strykius.*

(5) [*Ne tam [illegible]*] Omnes cautiones fiunt per ſtipulationem. Ergo, [illegible], [illegible] modo [illegible] [illegible], per ſtipulationem quod addi vel detrahi poteſt. *Strykius.*

(6) [*Judicatum ſolvendi cauſa*] Hæc cautionis ſpecies [illegible] [illegible]. Diſtinguitur tamen, an [illegible] ſe [illegible], an [illegible] ſit, an [illegible], ſive [illegible] [illegible] non poſſit: Præſtatur ſalvam [illegible] ſub hac cautione non eſt [illegible]: niſi [illegible] [illegible] [illegible]: Abſente ſalvam [illegible] ſub hac cautione eſt [illegible], vid. *ll. [illegible] ſi quis cautionem. [illegible] Proceſſ. [illegible]* §. n. 6. 25. *Strykius.*

(7) [*Requiruntur*] Quæ [illegible] eſt [illegible] fidejuſſoribus cavere, *l. 1. ff. qui ſatisd. cog.* [illegible] quidem *Carpz. p. 1. c. 5. def. 9. n. 2.* [illegible] [illegible] hodie [illegible] eſſe, ut fidejuſſoribus, ut pignoribus cavere velit; [illegible] [illegible] [illegible], [illegible] ſtipulationem [illegible], ſi ſol. [illegible], non [illegible] [illegible] [illegible]. *Mev. part. 3. Dec. 283. Strykius.*

(8) [*Invicem*] Hoc eſt, ſi [illegible] verſantur in ſi[illegible] qua [illegible] *pignora* non ſufficiunt, cum certam habeant [illegible]. [illegible] autem longè amplius ſe [illegible] poſſe. Exemplum in [illegible], ſi [illegible] per pignora cavere velit, ubi [illegible] [illegible] [illegible], cum ad [illegible] [illegible] [illegible], pignora non poſſint ſufficere. *Strykius.*

Hypothecæ non ubique ſufficienter cavent.

# TITULUS VI.

## Rem pupilli vel adoleſcentis ſalvam fore.

Hanc *ſtipulationem* (1) præſtant tutores legitimi & dati ſine inquiſitione, *pr. I. de ſatisd.* & qui pro tutore negotia geſſerunt: *4. §. 2. h.* non vero *teſtamentarii*, (2) *pr. I. de ſatisd. tut. 3. pr. 5. de confirm. tut. 5. §. 5. C. de curat. furioſ.* nec dati *ex inquiſitione*, (3) *2. de confirm. tut. 17. ſ. de teſt. tut.* niſi unus ex his *adminiſtrare velit* (4) *vid. §. 1. I. de ſatisd. tut. 6. in f. C. arbitr. tut. 9. C. de divid. tut. pr. §. 6. de adm. tut.* Minoribus & pupillis ipſis, ſi præſentes ſint, & fari poſſint, licet actum *non intelligant*: (5) *6. h.* qui ſi abſint, aut fari non poſſint, tum *prætor alium*, (6) etiam ſervum conſtituit, qui pupillo ſtipulatur, eique acquirit actionem utilem. *2. 3. 4. pr. L. 5. h.* Datis fidejuſſoribus. *4. §. 1. h. 7. de ſtipul. prætor. (obſ. §.)* (7) *Sande Exerc. XLVII. th. 10.* De ea adminiſtranda tutela curave, ut per eos res pupillorum, minorumve non capiat detrimentum. *1. §. ſ. L. 2. h. pr. I. de ſatisd. tut.* Committitur hæc ſtipulatio, quam primum aliquid non præſtatur, quod fieri debebat, *11. h.* finita tamen tutela *demum agi poteſt*: (8) *4. h. 4. §. 4. L. 9. de tutel. & ratio. diſtr. 9. §. 4. d. t.* ſpeciali tamen actione contra curatores agi poteſt, ſi quid ſalvum eſſe ex rebus minoris eſſe deſinit: *4. §. 4. & 7. l. 4. §. 3. h. L. 16. de tut. & rat. diſtr. 26. de adm. tut. Zoeſ. h. n. 4.* finita tutela demum etiam agitur contra fidejuſſores, ceſſante *[illegible] fonte.* (9) *11. L. ſ. h.* Inde datur actio ex ſtipulatu contra tutores, &c. & fidejuſſores eorum. *4. §. 2. vid. L. 9. 10. 11. h.*

S P Q R

### *Notæ variorum.*

Hæc ſtipulatio hodie ceſſat.

(1) [*Hanc ſtipulationem*] Hodie hæc ſtipulatio ceſſat, [illegible] pupillis & adoleſcentibus quo[illegible] modi cautionem nullus ſint, [illegible] [illegible] [illegible] conſiderandum eſt quod [illegible], qui [illegible] [illegible]

[illegible] & moleſtam ſuſcipit, dum verò condemnationes ovitare, hanc per ſe promotos diſfici[illegible] dendſiones reperire poſſint, qui per longius tempus, alienas adminiſtrare nomine ſuo periculo eſſe velint, denique Magiſtratum ſit proſpicere, quo læſioni, ſi quæ imminent, maturè occurrant, adeoque ſecuritati pupillorum & minorum hac ſimul in re proſpectum videatur. Quod ſi tamen quis divino pupilli tutelam, ſua commoda cauſa affectet, ille non eo damnandus legibus [illegible] pendus foret. *Thom.*

(2) [*Teſtamentarii*] Quia illorum nomen probavit Teſtator. Hodie tamen per *Reformat. Pu-* [illegible] *de anno* 1577. *Tit.* 32 indiſtinctè omnes Tutores ad hanc cautionem obligantur. Verum, cum hodie rarò tutor non poſſeſſionatus conſtituatur, poſſeſſio autem immobilium à ſatisdatione liberat, non ſolet amplius à Tutoribus aliud exigi, quam ut manu ſtipulata promittant fidem, ſe ex [illegible] munus gerere velle. *Berg.*

(3) [*Ex inquiſitione*] Nam fides inquiſitionis pro vinculo cedit cautionis, *l.* 13 *§. f. ff. de tut. dat. Berg.*

Unus ex pluribus adminiſtrare volens, ſatisdare debet.

(4) [*Adminiſtrare vult*] Nam tunc hic offerre ſatisdationem debet, & reliquis præfertur, quod fieri pupillorum intereſt, cum unum facilius in judicio agere & convenire poſſit, *l.* 2. *&* *l.* 3. *§.* 6. *de adminiſt. tut. Berg.*

(5) [*Non intelligatur*] Cum enim hæc ſtipulatio in judicio exponatur, defectum intellectus ſupplebit, vel Judex, vel præſentia cognatorum. Hodie ubi ſolemnitas ſtipulationis ceſſat, pupillorum præſentia non eſt neceſſaria. *Berg.*

Hanc cautionem ſufficere [illegible]

(6) [*Prætor ipſum*] Hodie, ſi caſus adhuc contingat, quo cautio neceſſaria ſit, ipſe Magiſtratus eam exigit. Imo, quia ſtipulatio hodie neceſſaria non eſt, ad cautionem regulariter ſufficit promiſſio [illegible]. *Berg.*

Sufficit cautio pignoratitia, tamen hodie [illegible]

(7) [*Ubi §.*] Communis ſententia hodie cautionem pignoratitiam admittit, imò, plerumque ſola promiſſio ſufficit. *Berg.*

(8) [*Dominium ejus periiſſe*] Quia hodie ſingulis annis tutores reddunt rationes. Non dubium non eſt, ſi defectus aliquis culpa Tutoris cauſatus deprehendatur in rationibus, actio contra tutorem agi poſſe. *Tit.* [illegible] *ſub* 1. *membr.* 9. *§.* 1. *Berg.*

Plures ſi dati fidejuſſores [illegible] beneficium diviſionis.

(9) [*Beneficium diviſionis*] Eo ſcil. caſu, quando ab uno tutore plures fidejuſſores dati, ut in plures adverſarios diſtinguatur pupillus, *Franck. de fidejuſſ. c.* 5 *n.* 468. Sed ſi à pluribus tutoribus dati, perinde, ut ipſi tutores, habent beneficium diviſionis, hoc eſt, non pro numero fidejuſſorum, ſed pro numero tutorum, vide *ſupra tit. de fidej. Tut. Berg.* [illegible] idque commune non eſt. *Mevius.*

# *TITULUS VII.*
# Judicatum ſolvi.

6 Hæc ſtipulatio præſtatur, ſi per alium reus defenditur, vel ab ipſo reo procuratorem conſtituente, *6. de procur.* vel ab eo, qui reum abſentem ſine mandato defendit: *L.* 76 *de procurat. §.* 4. *I. de ſatisdat. 10. h. L. un. C. de ſatisdat. Cujac. l.* 10. *O.* 20.

P Actori, (tutori, curatori 1. §. 1.) in ipſo

Q litis initio, *L. un. C. de ſatisd.* Datis fidejuſſoribus. 5. §. f. ſi vero ipſe principalis reus

O pro procuratore ſuo hæc fidejubeat, inſuper requiritur, ut caveat *hypotheca* [1] ſuarum rerum. *§.* 4 *I. de ſatisd.* In hanc ſtipulationem venit (1.) res judicata, h. e. ſolutum iri, quod judex pronunciaverit: *6. ff. §.* 5. *h. h.* (2.) res defendenda, cui locus eſt, ſi viri boni arbitratu, non defendatur reus, quo nomine actor, quanti

R ipſius intereſt, exiget à reo, ejusve fidejuſſore: 9. 19. 7. 5. §. f. (3.) dolus malus, ſc. quod abit & abiturus ſit, 10. 19. h. *Committitur* [2] hæc ſtipulatio *ob rem judicatam* [3] ſtatim poſt rem judicatam, ſed dies demum venit *elapſo tempore*, [4] quod reo damnato indulgetur: 1. *h.* & tum certam quantitatem continet hæc ſtipulatio, q. a. quæ antequam *committeretur*, [5] fuit incerta: 2. §. 2. *de prætor. ſtipulat. Wiſſenb. h. th.* 26. *Ob rem non defenſam*, [6] ſi ex ea lis fuerit conteſtata, 13. *pr.* ac niſi *lis mortua* [7] aut finita ſit; 2 13. *in f pr.* 15. *h.* appellatione interpoſita *non liberatur fidejuſſor*, [8] niſi nominatim promiſerit, illud tantum, quod hic judex judicaverit, 5. *pr. h.* 15. *C. de procurat.* 76. *de judic. Tiſſaur. deciſ.* 200. *Donell.* 18. *c.* 14. *Wiſſenb. h. th.* 27.

Hæc

## Notæ variorum.

vel cum cautione [illegible] ... [illegible] bonorum & ſuſpectos, vid. *Corp. Pont. Tit. 5. art. 5. § 15. 16. Titius.*

# TITULUS IIX.

## Ratam rem haberi, & de ratihabitione.

Hæc præſtatur à procuratore actoris & defenſore rei in judicio petiti. 46. §. 2. *de procurat.* non etiam in *perſon.* (1) 65. § 5. *eodem.* cum de ejus mandato dubitatur, 1. h. 1. C. *de procur.* §. 3. J. *de ſatiſdat.* vel 1. §. 4. 3. *quod cujuſque univerſitat. nom.* 1. § 3 C. *de admin. tut.* 23. § *eodem* ab initio litis, 40. §. 3. *de procurat.* niſi demum poſt litem conteſtatam compareat procurator, 1 C. *de conſort. ejusd. lit.* Committitur hæc ſtipulatio, ſi dominus rem non ratã habuerit expreſſe 12 §. 1. aut tacite: 5. h. & tum agitur contra promiſſorem, ejusque fidejuſſores, ſucceſſores, 22 *ad intereſſe* (2) ſtipulatoris 13 19. h. hinc ſi pro parte tantum ratihabeat, tum ſtipulatio tantum pro parte committitur: 18. quod ſi dominus ab initio rem non ratihabeat, deinde ratihabeat, committitur quidem ſtipulatio, promiſſor tamen ex æquitate habet *doli except. com.* (3) 12. §. 2. h.

### *Notæ variorum.*

(1) [*In perſon.*] [illegible] *Titius.*

(2) [*Ad intereſſe*] [illegible] *Titius.*

(3) [*Doli exceptionem*] [illegible]

LIBER

# LIBER XLVII.

## *TITULUS I.*

## De privatis delictis.

A D Elictum est factum *ſponte* admiſſum, *bonus* [illegible] & juri contrarium, D
eoque animadverſione dignum. [illegible] *de furt.* [illegible] *de ſicar.* Requiritur R
* (1.) *FACTUM*, [illegible] *de O. & A.* (De animo enim *ſolus Deus judicat* [illegible] *de furt.* [illegible] *de pœn.* [illegible] *de V. S.* *CONATUS* tamen, qui eſt delictum imperfectum, interdum impunitus manet in levioribus delictis, [illegible] *quod quisque jur.* [illegible] *de his, qui not. infam.* [illegible] *ad L. Corn. de falſ.* *interdum punitur* * in levioribus delictis: in *gravioribus* autem regulariter ſemper punitur pœna *extraordinaria* [illegible] *de extraord. crimin.* circa quam determinandam judex reſpiciat, (1.) an ille actus à perfectione remotus ſit, nec ne: (2.) an reus *pœnitentia* ductus an verò *casu* impeditus delictum non perfecerit: [illegible] *ordinaria* * tamen pœna punitur conatus (a.) In homicidio *attentato* [illegible] *C. ad L. Corn. de ſicar.* (*contra* §.) [illegible] (*B.*) In parricidio attentato. [illegible] *de L. Pomp. de parricid.* [illegible] *C. de his, qui parent. vel lib. occid.* (*contra* §.) [illegible] (*y.*) in crimine perduellionis. [illegible] *C. ad L. Jul. majeſt.* [illegible] (*δ.*) *in aſſaſſinio* [illegible] *de homicid.* [illegible] §.)

▲ * (2.) *SPONTE* admiſſum, h. e. dolô vel culpa: hinc excluditur caſus. [illegible] *Cod. ad L. Corn. de ſicar.* [illegible] *ad L. Aquil.*

*DELICTA ſunt* (1.) *Eccleſiaſtica*, quorum cognitio pertinet *ad judicem Eccleſiaſticum*, ut hæreſis, apoſtaſia. Secularia, de quibus cognoſcit judex ſecularis, ut majeſtatis &c. *& mixta*, quæ utrud *ad utrumque* ſpectant. *vid. Theodor.* [illegible]
† *Colleg. criminal.* D. [illegible] (2.) Nominata & innominata [illegible] *Tab.* [illegible] *&*
† *ſeqq.* (3.) *Vera*, *quæ committuntur* ex propoſito, & quaſi delicta, quæ *ex culpa* committuntur, damnum tamen injuria datum, ad vera delicta refertur, licet ex
† culpa ſit, quia in eo principaliter tantum reſpicitur ad damnum *reſarciendum*.
D Vera delicta iterum *ſunt vel Publica*, *de quibus in ſeqq.* vel Privata, quæ commit-
† tuntur *in privatum* eoque non LL. publicorum judiciorum, ſed privata actione
D *actione* læſo competente vindicantur. Sunt vel ordinaria, quæ certam & determina-
D tam læſo debitam habent pœnam, *Extraordinaria*, quæ talem pœnam non habent.
C Delictum conſtituit *LL. prohibens*, [illegible] *de concubin.* [illegible] *de ſepulchr. violat.* [illegible] *de uſufr.* [illegible] *ſolut. matr.* [illegible] *de vulg. & pup. ſ. C.* [illegible] *delict.* [illegible] *de V. S.* Et mala delinquentis *voluntas*. [illegible] *C. de ſicar.*
§ Ex delicto obligantur omnes, maſculi & fœminæ [illegible] *de pœnis.* (Hæ tamen *aliquando* mitius puniuntur, [illegible] *ad L. Jul. de adult.*) ſtultiloquentes [illegible] *L.* [illegible] *de Senat.* ſervi, [illegible] *de O. & A.* Muti & ſurdi, [illegible] prodigi. [illegible] Modò uſu rationis non deſtituantur. Hinc excluduntur (1.) *Bruta.* [illegible] *ſi quadrup. pauper.* (2.) infantes [illegible] *de R. J.* [illegible] *de fidei. libertat.* [illegible] *ad L. Corn. de ſicar.* [illegible] *ad Leg. Aquil.* [illegible] *de furt.* [illegible] *de injur.* [illegible] *vi bon. rapt.* [illegible] *de ſepulchr. violat.* [illegible] *ad Leg. Cornel.*

* *d. tamen Cz. 3. q. 143. num. 19.* (3) Infantes proximi *111. de R. J. pen.* [illegible] *ſtipul* [ qui autem tales ſint, *judicis arbitrium:* (10) *arg. §. 2. de jur. delib. Carpz. 3. q. 143. num. 31.* ex *facti circumſtantiis* (11) ſecus eſt in *pubertati proximis*, (12) *111. de R. J. 23. de furt. 5. §. 2. ad Leg. Aquil. 3. §. 1. de injur. 7. Cod. de pœn.* [ nam hi extraordinariè puniuntur. *Carpz. 3. q. 143. n. 35. vid. artic. 164. O. C. Carol. V. Cz. 3. q. 143. n. 41.* ra*riſſimè tamen* (13) ultimo ſupplicio *artic. 164. O. C. Carol. V. L. 23. §. 2. de Ædil. Edict. Cz. 3. q. 143. n. 41. 38* ] & puberibus, hoc eſt, qui XIV. annos impleverunt, ſive maſculi ſint, ſive fœminæ: *dicto art. Cz. 3. q. 143. n. 26.* §. his tamen pœna ſæpe mitigatur: (14) *37. §. 1. de minor. Cz. 3. q. 143. inf.* ][4] *furioſi* (15) *3. §. 1. de injur. 5. §. 2. ad L. Aquil. 12. ad L. Corn. de ſicar. 14. de offic. præſid.* [ neque ob delictum ante commiſſum, puniuntur in furore, propter periculum *ſalutis æternæ.* (16) *Cz. 3. q. 143. num. 22.*]

Delinquitur in perſonas quaſvis, & res omnes, *1. §. 1. de injur. Tabor. racemat.* O
B *1. th. 2.* Hæc delicta ſunt *probanda,* (17) *ſ. C. de probat.* * directè per teſtes *idoneos*, (18) pr.
*ſ. C. de probat. Cz. 3. q. 114. n. 18. Inſtrumenta,* (19) *d. L. ſ. 15. C. de fid. inſtr.* confeſſionem reorum, *L. un. C. de confeſſ.* modò de *corpore delicti* (20) etiam conſtet. *Cz. 2. q. 11. & p. 1. q. 16.*
b. * per indirectum, per *manifeſtiſſima* (21) indicia, *d. l. ſ. Cz. 3. q. 120.*

Hinc eſt obligatio ad pœnam, vel ad præſtandam: & remedia, quibus delinquens convenitur, * *Ordinaria*, (40) ſc. actiones, quibus jure ordinario rem ad vel E
C pœnam perſequimur. * *Extraordinaria,* (41) actiones, quibus extra ordinem ad pœnam fiſco applicandam, vel corporis afflictivam agimus, *tot. t. h.*

## *Notæ variorum.*

(1) [*Sponte*] Id eſt, ex propoſito, hoc enim ſolum delicta diſtinguit, [illegible] an quis dolo, an ſponte, an per ignorantiam peccaverit. *Bergl.*

(2) [*Nocendum*] Quod honeſtum [illegible], turpem quidem facit [illegible], ſed non [illegible] producit actionem [illegible], niſi lex idem factum ſimul improbet. *Bergl.*

(3) [*Solus Deus judicat*] Scilicet [illegible] in ſolo animo interno ſubſiſtit, ſed ſi exterius ſe per *factum*, ex facto malo [illegible] præſumitur animus malus, donec probetur contrarium. *L. ſ. non contrarium §. C. de injur. Bergl.*

(4) [*Interdum puniuntur*] [illegible] *in facto delictum*, [illegible] *non ſequente facto.* Sic ſi ſtuprum violentum inferre voluit jam cum apprehenſione fœminam, & per eam in terram projecerit, ſed [illegible] ſc. [illegible] de ſtupro non tenetur, ſed de [illegible]. Porro etiam, qui furandi cauſa ædes alienas aſcendit, vel effregit, ille de vi non de furto tenetur, *L. 21. §. 7. l. 17. ff. de furt.* Al[illegible] Exemplum in [illegible] *feudali*, ſi [illegible] Vaſallum cum uxore Domini, ubi pœna [illegible] feudo privatur, ac ſi [illegible] Dominum concubuiſſet, *2. F. c. 23. qu. 24. Bergl.*

(5) [*Ordinariam*] Quodcunque delictum gravius [illegible] levius ſc. vid. *Carpz. Prax. Crim. p. 3. q. 102. n. 60. ſeqq.* ubi graviter & atrociter [illegible] delictum vocat, quod meretur pœnam capitalem, aut ad minimum corporis afflictivam. *Bergl.*

(6) [*Extraordinariam*] [illegible] in actibus remotis, an perveniat ad actum proximum, & ex [illegible] pœna temperanda. *Bergl.*

(7) [*Pœnitentiam*] Modo per pœnitentiam [illegible] pœnam in priſtinum ſtatum reduci poſſit. *Bergl.* Quandoque [illegible] per pœnitentiam temporibus delictum pœnam aboleri, *l. 1. C. de crim. [illegible] l. 19. ff. ad L. Corn. de falſ.* [illegible] *C. [illegible] 48. th. 4.* Aut [illegible] in [illegible] delicti pœnam [illegible], ut in furto per [illegible] obtinet juxta *[illegible] 33. §. ſ. [illegible]*

(8) [*Externus*] [illegible] poſſunt [illegible] pœna. Nam ex parte agentis delictum pro perfecto haberi poteſt, cum quantum in ipſo fuit nihil planè [illegible], quo minus delictum conſummaretur. *Bergl. ad Grot. lib. 2. c. 20. n. 39. Bergl.*

(9) [*Ordinaria*] [illegible] quidem *Jure* [illegible] Nobis vero, ſi [illegible] ob verba *2. F. c. 24.* [illegible], [illegible] unquam [illegible] pœnam ordinariam. *Bergl.*

(10) [*Arbitrium*] [illegible] quæ [illegible]
[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

(26) [illegible]

(27) [illegible]

(28) [illegible]

(29) [illegible]

(30) [illegible]

(31) [illegible]

(32) [illegible]

(33) [illegible]

(34) [illegible]

(35) [illegible]

(36) [illegible]

(37) [illegible]

(38) [illegible]

(39) [illegible]

(40) [illegible]

(41) [illegible]

art. 8. § de A. 1654. § 36. Jung. A. 8. c. 14. Vel *Superius eſt*, vel *Provinciale*, ut *Amtmannus*, ut quo tenditur ob contraventionem ad bannum *Rumorum*, der Recht. Vel *Inferius*, der Unter-Recht quod operatur, ut bannitus ſub pœna exilium Bannitum commorari prohibeatur, ut à quolibet, tanquam ſublatis juris convictus de crimine capi atque executioni judicis Bannientis tradi poſſit. Vel *Superius* der Ober-Recht, quod operatur, ut Bannitus non tantum è loco juriſdictionis Bannientis, ſed etiam ſuperioris, modo illi facta ſit denunciatio, e. gr. Ex toto *Archi-Baronatus* excluſum, in ſuam exciderat, hunc per confiſcationem (atque liberorum legitime, vel conjugis portione ſecundum) procedit § M. l. 2. A. 38. junge p. 3. C. M. 6. & à quolibet in ea Provincia ad pœnam ultimi ſupplicii ſuſtinendum detineri judicique tradi queat. Sed *Imperfectum* eſt, quando judex ob crimen gravitatem in veritatem delicti clamque inquirere, ut admiſſum maneat impunitum. Is vero dividitur in *Generalem*, quo in corpus delicti & perſonam delinquentem generaliter inquiritur. Et *Specialem*, quo poſt probabilem commiſſi criminis notitiam adverſus certam perſonam judicio gravatum inquiritur, ut eidem pœna legitima imponatur D. C. art. 6. Ref. Or. M. de A. 1609. gr. 5. Moniiſ.

# *TITULUS II.*

# De furtis.

***Junge l. 5. C. 1. 18. l. 7. C. 1. 2. l. 5. x. 1. 18.***

Furtum eſt *delictum privatum*, (1) quo *res aliena*, (2) invito domino, lucri cauſa, fraudulenter contrectatur. [1.] Diviſio furti in conceptum, oblatum, prohibitum, non exhibitum, in uſu eſſe deſiit *§. 4. I. de obl. quæ ex delict.* nam hodie res furtiva in alienis ædibus regulariter quæri *non poteſt*, (3) *2. C. de alim. pupill. præſt.* niſi adſint probabilia indicia, & publica utilitas id exigat, tum enim auctoritate publica fieri poteſt: *arg. 15. de off. præſid. Theodor. in Colleg. Crim. D. 2. th. 2. A.* Et tum, ſi res apud aliquem inveniatur, ille incidit in ſuſpicionem criminis, *2. C.* adeò, ut propterea *torqueri* (4) poſſit: *artic. 43. Ord. Crim.* modò [α.] non ſit vir integræ famæ. [β.] res illa ita *cuſtodita fuerit*, (5) ut alius præter inhabitatorem ædium illam poſuiſſe non potuerit, [γ.] ille non poſſit nominare auctorem ſuum, neque in genere: e. gr. ſe in foro emiſſe, *1. C. Carpz. 3. q. 121. num. 30.* [2.] * Manifeſtum eſt, in quo fur, *3. 4. h.* cum re furtiva, antequam ad eum locum, *3. §. 2. ſ. pœnult. I. 5. h.* quo ea die permanere deſtinavit, pervenit, deprehenſus eſt: Der auf friſcher That ergriffen. *art. 157. 158.* nec refert, quis eum deprehendat. *3. §. 1. h. 7. §. 1. h.* aut quomodo deprehendatur, clamore, accurſu, aut aliò conatu; *7. §. 2. h. art. 157. & 158.* ſola viſio non ſufficit: *7. §. 1. Obſ. §. 3.* (6) *fere in med. I. h.* nec * manifeſtum eſt, in quo fur cum re furtiva dicto modò deprehenſus non eſt: hodie adhuc uſus eſt hujus diſtinctionis, (7) *art. 157. 158. Theodoricus d. l. Tabor. racemat. 2. th. 21.* (*Diſſ. Mynſing.* (8) *Schultz. Harpr. ad §. 3. I. de oblig. ex delict. Cc. 2. qu. 78. n. 2. Obrecht. D. 30. th. 17*) [3.] Domeſticum eſt, quod committitur à perſonis domeſticis. *11. §. 1. de pœn.* Extraneum, quod ab aliis; quinam autem *ſint domeſtici*? (9) *vid. Carpz. 2. q. 82. n. 37.* [4.] Nocturnum & Diurnum. *4. §. 1. ad L. Aquil. 54. §. 2. h.* [5.] Magnum, quod continet 5. ſolidos, Parvum, quod 5. ſolidos non continet. *art. 159. 61.* [6.] ab objecto in Sacrum, (Sacrilegium) Publicum (Peculatus) Reſiduum, & Privatum: quorum tria priora pertinent ad publica judicia [7.] Simplex, cum quo circumſtantiæ delictum aggravantes non concurrunt. Qualificatum, cum quo tales circumſtantiæ concurrunt, e. gr. quod factum *cum adſcenſu*, (10) armis &c. *art 159.* [8.] Primum & Reiteratum. *art. 158. 159.* [9.] à fine, furtum

tum eſt vel totius rei, vel * tantum uſus, ſi e. gr. depoſitarius re utatur contra deponentis voluntatem: 1. § f. * tantum poſſeſſionis, (20) e. gr. ſi debitor pignus ſuum auferat, 1. §. f. [illegible] 15. [illegible], qui teſt. lib.

Cauſa efficiens eſt Jus naturale, (21) (nam hoc etiam verſatur circa ea, quæ humana voluntate poſtea ſunt adinventa: (22) Vid. Grot. lib. [illegible] 10. & lib. 2. c. 2.) Gentium & Civile Grot. [illegible] de V. S. ET malitioſa furis voluntas §. 2. I. de uſucap. L. 37. pr. de uſurp. §. 7. I. h. furtum * faciunt omnes, qui ratione non ſunt deſtituti: [illegible] etiam tutor, [illegible]. (24) Vid. 33. ff. 3. 11. C. actione furti tamen non conveniuntur conjuges, (25) [illegible] perſonæ domeſticæ; 17. pr. [illegible] h. * patiuntur omnes, quorum ex juſta cauſa immediate intereſt rem non auferri,

Res licet minima, (26) §. 16. de R. D. Obſ. [illegible] (27) [illegible] 10. de dol. mal. * [1.] mobilis, §. [illegible] I. de uſuc. 38. de uſurp. [illegible] h. non etiam incorporales, 75. quæ propriè tales nunquam ſunt. [illegible] de pecul. L. 15. §. 2. de re jud. nec immobiles. §. [illegible] I. de uſucap. L. 38. de uſurp. 25. h. * [2.] aliena, §. 6. I. h. [ hoc eſt, quæ alterius eſt, aut in qua alius habuit jus * in re, e. g. ſi debitor auferat pignus, 12. §. 2. 19. §. 5. 6. L. 19. 75. h. proprietarius rem fructuarium, 15. §. 1. dominus bonæ fidei poſſeſſori 20 § 1. h. * ad rem, modo hoc in caſu de tacens neceſſarias impenſas in rem fecerit, indeque jus retentionis habeat, 15 §. f. [illegible] L. 55. §. f. h. [illegible] * dominus hanc ſuam rem clam auferens furti non tenetur: 15. §. 2. h.) modo auferens ſciverit eam ſuam non eſſe. 43. §. 4. h. [ hinc excluditur res propria, in qua alius nec jus in re, nec ad rem habet, item res, quæ plane nullius eſt (28) [illegible] h. patri ratione liberorum ex jure antiquo patriæ poteſtatis. datur alio furti (29) [illegible] de R. V. [illegible] h. derelicta (30) vid. 43. § [illegible] 10. h.) * [3.] Poſſeſſa, (31) 1. §. 15. [illegible] ſi is qui teſtam. liber. hinc rei hereditariæ furtum non fit ante aditionem, (32) d. L. niſi alteri ſit e. gr. commodata, hic enim hæres poſſidet: 68. 69. 70. h. qui partem abſtulit, & totum auferre * potuit, totius (33) furtum commiſiſſe videtur uti totum non ablata [illegible]: (34) L. 21. § f. * non potuit, de eo, quod non abſtulit, non tenetur, 21. pr. §. [illegible] Vid. Tabor [illegible] 38.

Forma eſt * Contrectatio, quæ fit non ſolum naturali rerum amotione, ſed & abuſu rei ex juſta cauſa apud ſe exiſtentis. 40. pr. depoſ. 54. pr. § [illegible] C. 12. §. [illegible] h. [illegible] de usuf. & [illegible] 53. h. [illegible] C. 43. 66. 67. h. ( non ſufficit cogitatio, (36) 1. § 1. verbum, 52. §. 19. inficiatio, (37) 67. pr. ingreſſio in conclave, (38) 21. § 7.) & facta ab illis fingitur, * quorum ope vel conſilio (39) furtum factum eſt, 50. §. [illegible] 53. §. 1. de V. S. 52. §. 10. 54. §. 4. h. [illegible] ad §. 11. I. h. [illegible] modò conſilium, modum etiam & occaſionem ſpecialiter monſtret, 50. §. 3. h. ( nudum enim non ſufficit: §. 11. I. h. 53. §. 2. de V. S.) & effectus conſequatur, 52. §. 19. h.

* qui ſcientes furem celant, (40) 14. C. h. rem furtivam emunt, aut alio modo per quaſi ratihabitionem participes delicti fiunt: 12. C. h. plura ſunt in L. 52. [illegible] §. 20. 23. §. 19. C. h. * fraudulosa. 37. pr. de uſurp. §. 7. I. h. quæ non fit in volentem. 145. de R. I. * invito domino facta, §. 7. I. h. 46. § [illegible] ( qui credit, * juſta opinione dominum conſenſurum, non furatur 46. §. 7. 61. pr. * dominum non conſenſurum, furatur licet dominus revera conſenſiſſet: 46. §. 8. actione furti tenetur: non tenetur, nam dominus eam conſenſu ſuo remiſiſſe videtur, 46. § [illegible] I. h. Diſſ. [illegible] ad §. 8. I. h.]

* Lu-

* Lucri gratia [illegible] non etiam ex alia cauſa, e. g. libidine (*Vid.* [illegible] [illegible]) [illegible] *de probatione* [illegible] debiti *Vid. ſupr.* [illegible] *Tabor, ad* [illegible] *Carpz.* [illegible]

Effectus (*vid. Tabor. racem.* [illegible]) * primus quoad * perſonam delinquentis eſt obligatio ad pœnam: cum fur * nocturnus impune *occidi poſſ.*[14] modo (1.) [illegible] * ſit, nec teſtes adſint, (2.) capi non poſſit, (3.) hæc occaſio ſiat præcedente [illegible] clamore, [illegible] *ad L. Aquil.* (4.) pro defenſione corporis, vel rerum: *L.* [illegible] *ad L. Corn. de ſicar.* [illegible] *ad L. Aquil. Carpz.* [illegible]

* diurnus non item, niſi telo ſeſe defendat [illegible] *ad L. Aquil.* [illegible] * patiens eſt, quod ipſe retineat quidem Jus, quod in re habuit, in poſſeſſione verò turbetur, [illegible] *de A. vel A. P.* & habeat furem ſibi obligatum: quoad * rem, eſt, quod ea *fiat vitioſa* [illegible] *vid.* [illegible] *de uſucap.*

* ortus ſunt remedia, quibus furtum vindicetur * ordinaria: (hic effectus tamen interdum impeditur, *vid. ſupr.* [illegible] *& infr.* [illegible]) *ACTIO FURTI*, quæ eſt actio pœnalis, competens omnibus, quorum ex juſta cauſa immediatè intereſt, contra furem, ad pœnam pecuniariam ſibi adjudicandam. Eſt merè pœnalis, civilis, non criminalis. *Diff. Cladius de* [illegible] *furtis.* eſt vel furti manifeſti, vel nec manifeſti:

Cauſa efficiens furti manifeſti *eſt Prætor.* [illegible] *de* [illegible] contra LL. XII. tabb. furti nec manifeſti eſt Jus civile. [illegible] Cauſa proxima eſt ipſum furtum.

*Datur ei cujus intereſt*, [illegible] (& heredibus: [illegible]) *non etiam domino*, [illegible] cujus nihil intereſt, e. g. qui habet alium obligatum ad rei ſuæ æſtimationem præſtandam. [illegible]) ex juſta cauſa, [illegible] (hinc non datur * furi, qui rem furto iterum amiſit, [illegible] *poſſeſſionis tamen fur* [illegible] ſit: hæc enim rem ex juſta cauſa penes ſe habuit. [illegible] *vid.* [illegible] *Tabor racem.* [illegible] non obſtante, quod furi dentur actiones ex contractu [illegible] furto: [illegible] *quod* [illegible]

* illi qui dolo ſuo rem furto amiſit [illegible]) intereſſe, h. e. qui detinent rem ſubreptam. [illegible] ut venditori ante rei traditionem, non etiam emtori: [illegible] debitori ex *obligatione*, [illegible] non creditori, [illegible] marito rei dotalis, non etiam uxori. [illegible] heredi ratione legati nondum traditi, non *legatario* [illegible] (*obſ.* [illegible]) *vid. Tabor racem.* [illegible] Ita etiam datur conductori, fulloni, &c. qui domino ad æſtimationem rei tenentur: [illegible] Modò (1.) furtum ſit eorum culpa admiſſum, [illegible] alias enim impedit hanc actionem vel dolus illorum. [illegible] vel, quod eorum nihil intereſt, ſi *citra culpam* [illegible] eorum periit. [illegible] (2.) dictæ perſonæ ſolvendo ſint [illegible] & perſonæ lucrantur id quod acceperunt hac actione, [illegible] Creditor tamen id, quod ratione pignoris ſurrepti accepit, in ſortem computare & reſiduum domino *reddere debet*, [illegible] niſi ipſe debitor pignus ſurripuerit. [illegible] *de* [illegible] [illegible] Si commodatario res ſubripitur, *dominus eligit*, [illegible] an contra commodatarium actione commodati, an adverſus furem actione furti agere velit: illo in caſu commodatarius habet actionem furti contra furem hoc vero in caſu liberatur, ut nec contra eum detur *regreſſus domino* [illegible] *de jure* [illegible] *vid.* [illegible] *commod.* Contra fures, [illegible] [illegible] utcunque contrectaverint: [illegible] niſi furtum commiſerit (1.) Ser-

vus propriâ bona [illegible] (a) Conjux, tum enim in hujus locum datur actio rerum amot. [illegible] rerum amot. (b) personæ domesticæ, libertus, mercenarius, &c. si furtum fit vilius, [illegible] de pœn.

In furto manifesto ad quadruplum, in nec manifesto ad duplum, quod est mera pœna [illegible] quod quomodo computetur, docet Tabor. [illegible] Ipsa autem res repetitur vel actione præparatoriâ ad exhibendum, vel principali, condictione furtiva, quæ cum hac cumulari potest, (vel rei vindicatione) [illegible] de condict. furtiv. [illegible] Hæc pœna applicatur actori, qui tamen eam [illegible] restituere: vel [illegible] S. Reus solvat pœnam, & sit infamis, nec hoc à judice remitti potest [illegible] extraordinariam graviorem pœnam non impinget. [illegible] de his, qui not. in fam.

Hanc actionem impediunt defectus [illegible] de quo supra, aliam tollunt pactum, transactio, [illegible] &c. non etiam pœnitentia. [illegible]

Hæc actio hodie plurimis in locis abiit in desuetudinem, [illegible] ut in Gallia. [illegible] in Saxonia, [illegible] D.D. Wurtemberg. Harpr. ad [illegible] (Diss. Tabor. [illegible])

* Extraordinarie, criminali persecutione agitur ad pœnam fisco applicandum [illegible] quæ tamen nunquam extendebatur ad membri abscissionem, [illegible] Constitutione Friderici tamen ad mortem extendi potest, si quinque solidos [illegible] excedat, [illegible] & expressius constitutione Crimin. Car. V. [illegible] Secundum quam tamen ita distinguo: propter furtum * qualificatum, einen gefährlichen Diebstall (in quo ascensio, effractio, [illegible] & arma intervenerunt, alternative ex mente Caroli V. [illegible] Tabor. [illegible] [illegible] ex benignitate [illegible] Harpr. ad [illegible] [illegible] de pœna furti.) masculus suspenditur, [illegible] fœmina suffocatur in aqua, [illegible] tamen interdum oculi effodiuntur, [illegible] aut manus amputantur, [illegible] sed hoc vix unquam observatur.

* simplex * primum * parvum, quod non continet V. aureos, [illegible] Ducaten [illegible] ubi simpliciter dicitur Gülden; cujus valor est [illegible] Kreutzer eo tempore, quo hæc Ordinatio condebatur, anno [illegible] Groß-Gulden [illegible] de leg. [illegible] de suppel. legat.) * nec manifestum, tum punitur præstatione dupli, nec prius carcere (ubi fuit [illegible]) emittitur, quam expensas solvat, & præstet urphedam, h. e. juramentum de vindicta non sumenda, cujus formula est apud [illegible] Const. Crim. art. 157. hoc quoad rei æstimationem domino præstatur [illegible] fisco quoad pœnam [illegible] verò fiscus præterea [illegible] * manifestum, fur * vilioris conditionis ad numellas pœnas, fustigatus perpetuò relegatur [illegible] * honesto loco natus, aut, qui speratur melior, ex consensu Superioris punitur civiliter quadrupli præstatione, vel si hoc non possit, carcere [illegible] Hodie tamen hoc parvum furtum in genere punitur extraordinarie in Saxonia [illegible] [illegible] fustigatione, [illegible] si verò intra illam summam est, relegatione, vel carcere, vel mulcta. Carpz. [illegible] * magnum, quod continet quinque aureos [illegible] vel illorum æstimationem, [illegible] quod in Saxonia tum summam excedit, [illegible] tum arbitrarié punitur, habita ex consilio JCtorum ratione circumstantiarum, sc. adsuntive qualitatis, furis qua-

qualitatis, ejus deprehenſionis, damni illius, qui inde læſus eſt, adeò, ut ex mente *art. 160.* vero afficiatur ultimo ſupplicio: *Harpr. ad §. 5. I. h. Bes. ſpeciali tract. de pœna furti, c. 1. n. 173. 143.* quod tamen ſæpius accidit in Saxonia [illegible] & alibi. *p. 4. c. 32. d. 4.*
Carpz. *2. q. 78. n. 13.* *reiteratum *ſecundum *parvum, ſi utrumque 5. ſolidos non excedit, reus punitur publicè pro numellis poſitione, relegatione, vel *confinatione*, (76) daß er nicht darf aus ſeinem Flecken geben, ſive furtum manifeſtum ſit, ſive non. *art. 160.* *magnum, ſi utrumque continet 5. ſolidos reus punitur ſecundum circumſtantias, arbitrio judicis ex conſilio JCtorum, vel corporaliter extraordinariè vel capitaliter, & obſervatur hic *modus articul. 160.* (77) *Tertium, h. e. quod à prioribus re & tempore diſtinctum eſt, *Berw. d. l. n. 150. 160.* licet in diverſis territoriis ſit commiſſum, *Berw. d. l. n. 161.* & ſi propter præcedentia *ad minimum furti* (78) jam ſit punitus, *Harpr. ad §. 5. I. h. n. 63. Diff. Berw. d. l. n. 164.* reus ſuſpenditur vel ſuffocatur, *ut ſup. in furto qualificato Bodin. de republ. l. 6. c. 5. art. 160.* ſive furtum ſit magnum, ſive parvum, ſive manifeſtum, ſive non. *art. 160.* In Saxonia tamen debita *quantitas* (79) requiritur *Ca. p. 4. c. 32. d. 5. Carpz. 2. q. 78. n. 78. &c. vid. 5. C. de [illegible] auth. 4. C. de ſerv. fugit.*

Hæc pœna cum ſit dura, judex ob minimas circumſtantias *ad mitiorem* (80) *declinet.* (81) *Ca. 2. q. 80. &c. Tabor, [illegible] & ad artic. 157. &c. vid. Berw. d. l.*

## Notæ variorum.

Furtum, ſolis diebus publicis [illegible].

(1) [*[illegible]*] [illegible] hodie poſt *Conſtitutionem [illegible] publicam*, cum capitis [illegible] *Bergh.* Poſtea quam O. C. *art. 157. ſeq.* furtum quoque plerique [illegible] per [illegible] præcipuè [illegible] ſolet. [illegible] tamen propterea pœnam [illegible] eſſe [illegible], quia *d. Ord.* neque [illegible], neque [illegible]. *l. 41. ff. de O. & A.* [illegible] ſolvendo eſſet, [illegible] pœnam [illegible] eſſe [illegible] *l. 12. § fin. ff.* [illegible] *ad l. 10. ff. [illegible]* [illegible] *Cond. de [illegible] furt. c. 31. n. 27.* [illegible] *arg. l. fin. ff. de furt. O. C. art. 167.* [illegible] *p. 4. D. 245. n. 2.* [illegible] *l. 2. art. 29. Carpz. pr. Cr. qu. 85. n. 71.* [illegible]

(2) [*[illegible]*] Vel [illegible] *Bergh.*

(3) [*Non [illegible]*] Ne furtum [illegible] *l. 2.* [illegible] *quand. & quib. quart. [illegible] Bergh.*

Non ſuſtinet [illegible].

In [illegible].

(4) [*Tempore*] [illegible] tempus [illegible], ſi [illegible] furtum [illegible] *Bergh.*

(5) [*[illegible]*] [illegible] furtum deprehenderunt. *Bergh.*

(6) [*[illegible] § 3.*] [illegible] *§. 3.* [illegible] *Harpp. ad d. §. p. 787. Bergh.* Vel [illegible] furtum [illegible] *d. § 7. § 2.* [illegible] *& ad comprehendendum* [illegible] *Bergh.*

(7) [*[illegible]*] [illegible] Ob der Dieb darüber betreten oder beſchrieen ſey; & hoc caſu pœnam *quadrupli* [illegible] *Bergh.* Diſtinctionem furti in *manifeſtum & non manifeſtum.* [illegible] *furtum manifeſtum* pœna quadrupli, propter *non manifeſtum* dupli [illegible] *§. 5. J. de oblig.* [illegible] hodie? [illegible] *ad Art. 157. & 158. Conſt. Crim.* [illegible] pœna dupli & quadrupli [illegible] Verum [illegible], qui ad uſum Judiciorum reſpicit, [illegible] Romanorum [illegible], [illegible] hic [illegible] deprehendit, cum apud nos, ſive [illegible], ſive [illegible]

Pœna furti manifeſti in quadruplum, [illegible].

[illegible]

(8) [illegible]

(9) [illegible]

(10) [illegible]

(11) [illegible]

(12) [illegible]

(13) [illegible]

(14) [illegible]

(15) [illegible]

(16) [illegible]

(17) [illegible]

[illegible]

18, [illegible]

(19) [illegible]

(20) [illegible]

(21) [illegible]

(22) [illegible]

(23) [illegible]

(24) [illegible]

(25) [illegible] 1000. [illegible] 600 [illegible] 2000. [illegible] 600 [illegible]

(26) [illegible]

(27) [illegible]

(28) [illegible]

(29) [illegible]

(30) [illegible]

(31) [illegible]

(32) [illegible]

(33) [illegible]

(34) [illegible]

[illegible]

[illegible] (3) [illegible] (4) [illegible] (5) [illegible]

(40) [illegible]

(41) [illegible]

[illegible]

(42) [illegible]

(43) [illegible]

(44) [illegible]

(45) [illegible]

(46) [illegible]

(47) [illegible]

(48) [illegible]

(49) [illegible]

(50) [illegible]

(51) [illegible]

(52) [illegible]

(53) [illegible]

(54) [illegible]

[illegible]

(55) [illegible]

(56) [illegible]

(57) [illegible]

(58) [illegible]

(59) [illegible]

(60) [illegible]

(61) [illegible]

(62) [illegible]

(63) [illegible]

[illegible] lit.

[illegible]

(64) [illegible]

(65) [illegible]

(66) [illegible]

(67) [illegible]

(68) [illegible]

(69) [illegible]

(70) [illegible]

(71) [illegible]

(72) [illegible]

(73) [illegible]

(74) [illegible]

(75) [illegible]

[illegible]

[illegible]

[illegible]

[illegible]

*[illegible] art. [illegible] 22. Sed quid ſi [illegible]* [illegible] *Cum[illegible] non debere [illegible]. Subſcri[illegible]* [illegible] *de pœn.* [illegible] *l. 6. de appell.* [illegible]

# TITULUS III.
## De tigno juncto.

H*oc delictum* [1] eſt privatum, quo tignum furtivum alienis ædibus vel vineis jungitur, dolo vel culpa, ita, ut erui non poſſit ſine culturæ vinearum D
turbatione, aut ædium deſtructione. *arg. 1. pr. juncto* [illegible] *§. 17. Ne quid in loco publ.*

*Cauſa efficiens* [2] eſt Lex XII. tabb. *1. pr.* & voluntas jungentis *doloſa* [3] C
vel *culpoſa.* [4] Objectum eſt Tignum (*vid. 1. §. 1. h.*) [5] *furtivum,* [6] nam ſi quis ti- O
gnum *non furtivum* [7] jungat, non hæc actio, ſed in factum datur, de pretio reſtituendo, *[illegible] de donat. inter vir. & ux. arg. 2. h. vid. Vinn. ad §. 29. I. de R. D. n. 1. Zoeſ. h. n. 4. Weſenb. h. Struv. th. 28.*

A * Tignum ſic junctum fit pars ædium vel vinearum, quibus appoſitum eſt, & conſequenter ejuſdem domini quatenus ſtat ædificium, & junctum eſt; quatenus vero reſpicitur ad caſum ſeparati tigni, prior eſt & manet dominus: *§. 29. I. de R. D.* E

B * *Jungens obligatur* [8] inde domino ad duplum: *ACTIONE* de tigno juncto, quæ eſt pœnalis, perpetua, qua in D
duplum agitur adverſus illum, qui tignum furtivum ſuis ædibus junxit. Eſt vel mere *pœnalis, vel mixta.* [9] Cauſa efficiens Lex XII. tabb. *§. 29. de R. D. ne tignum eximatur,* [1] aut dominus tigni furtivi, dum vindicare illud non poteſt, eo cogatur carere: & juncto ipſius tigni. Datur domino tigni furtivi, *& omnibus,* [2] quorum intereſt, *1. pr. 2 h. §. 13. & 1. I. de obl. quæ ex delict.* contra jungentem, *five b.* [3] five m. fide, *§. 29. in f. de R. D.* (in m. f. jungente duplum eſt *mera pœna* [4] *1 §. f. L. 2. h. vid. Barr. de Act. D. 3. th. 27. p. 100.*) licet jungens *non poſſideat* [5] ædes, e. g. fabrum lignarium, ex communi natura furti, & propter generalia verba LL. XII. tabb. *Marpr. ad §. 29. I. de R. D. Tabor. ad h. t. th. 15. Def. C. L. A. [illegible]* non etiam contra heredem, *arg. [illegible] §. 1 de R. I. junct. 1. de calumn.* nec mixta competit contra b. f. poſſeſſorem heredem, *nec in quantum* [6] ad eos pervenit: nam hæc actio datur tantum contra eum, qui junxit: *dd. LL.* nec datur contra *quemcunque poſſeſſorem,* [7] *1. inf. pr. h.* Ad duplum, *1 pr. h. §. 29. de R. D.* quod in m. *f. poſſeſſ.* [8] eſt mera pœna, a. in b. f. poſſeſſ. etiam rei perſecutionem continet. *§. 29. I. de R. D.* Hic concurrunt imprimis contra mal. fid. poſſeſſ. *rei vindicatio,* [9] *2; §. 4. de R. V.* actio ad exhibendum non ad hoc, ut tignum eximatur, ſed ut æſtimatio præſtetur: actio furti. *1 §. f. L. 2.* & quidem cumulative ſi ipſe fur junxit, *[illegible] de R. I.* ſin vero alius, tum hæ actiones ex diverſis factis oriuntur, & ad diverſos fines tendunt, *2. de priv. delict.* Hodie in quibusdam locis ſola vera æſtimatio petitur, *Vinn. ad. §. 29. n. 4. de R. D.* L

### Notæ variorum.

(1) [*Hoc delictum*] Junctio tigni, de qua hic agitur, non [illegible] [illegible]

mationem perſequitur, negatur, id verum haud conſentaneum arbitramur, nam ob rei detentionem, æquitas alteri æſtimationem ſolvi jubet, & eadem hic eſt ratio, quæ in condictione ſine cauſa, hanc verò contra quemvis poſſeſſorem competere, liquet ex §. 20. *J. de rer. diviſ.* nec ſunt capienda verba legum, quæ de junctione loquuntur, exhibent enim caſum ordinarium, præterea ſola junctio non eſt actionis cauſa, ſed potius tigni alieni poſſeſſio. *Tutius.*

(16) [*Quemcumque poſſeſſorem*] Quia pœna cauſa ſupponit delictum, & ſic mixta perſonalis eſt. *Borgh.*

(17) [*In mala fidei poſſeſſore*] Duplum quod perſequimur actione de tigno juncto, ut *Amor*, exiſtimat malæ fidei poſſeſſore eſſe merum pœnam: in bonæ autem fidei poſſeſſore continere etiam rei perſecutionem. Etſi enim in *Syntagmate Brunnemanni Exerc.* 41. *th.* 46. leguntur hæc verba: *Neque ullum exemplum in legibus occurret, quo ratione rei ſervatæ, modo mixta, modo pœnalis ſit, una eademque actio.* ex tamen exemplo actionem de calumniatoribus vi bonorum raptorum (*vid. pr. J. vi bon. rapt. junct. l.* 5. *C. de calumniat.*) aliaque ſatis refutantur. Sanè enim actio de calumniatoribus contra eum, qui accepit, ut calumnioſum negotium moveretur, eſt quidem in quadruplum, ſed mixta, ita ut triplum tantum pœna ſit (unde & poſt annum tantum in ſimplum eſt, per *l.* 35. *ff. de O & A.*) Aſt eſt tamen eadem merè pœnalis, cum tertius fortè tibi pecuniam dat, ne aut hoc vexes calumnioſa, quo caſu tertius ille à te repetet id, quod dedit, & ego tibi tamen id adhuc quadruplum à te exigam, quo caſo ſunt quadrupla non poteſt amplius intereſſe rei, utpote quæ bis peti non debet, *l.* 57. *de R. J.* Erit jam totum pœna, aut ſuper eſt petenda à tertio, qui eam dederat. Eadem commutatio eſt actione vi bonorum raptorum, quæ intra eſt in quadruplum, ita ut quadruplum non ſit mera pœna, ſed tantum quoad triplum, At verò, ſi quis in adverſarium rapinam fecerit, tum illud quadruplum totum pœna eſt, *l.* 5. *C. de natur. XX.* J. quid? At non & *Aquilia Lege* actio ad hanc claſſem pertinet? Illa ſiquidem cum ſimplum perſequitur aliquando tantum rem petit, aliquando & rei & pœnæ perſecutione mixta eſt, cum, ſcilicet res corrupta, anno vel menſe ultimo pluris fuit, quam eo tempore quo corruptio facta eſt. Et autem, quod ſupra dixi, duplum illud manere quæ, qui mala fide junxit, eſſe meram pœnam, oppoſiti poteſt §. 29. *in fin. J. de rer. diviſ.* ubi indiſtinctè dicitur, dominum tunc demum non poſſe vindicare ſi duplum non eſt conſecutus. Sed hæc diſtinctionem inter *pœnam*, ibidem apparent, *Conf. l.* 101 *ff. de V. O. Papinian. in. l.*

(18) [*Aut vindicatio*] Non quidem directa illa, quia tignum poſtquam junctum, non amplius in eo ſtatu eſt, ut vindicari poſſit, niſi colliſo rerum ædificio, ſed utilis ex hoc capite, quaſi tignum illud ædibus junctum dolo deſiiſſet poſſidere, & hanc hoc utili actione æſtimatio petitur. *Borgh.* Hodie actio de Tigno juncto nuſquam non abrogata, eamque indulgen ſerum eſt quam actionem difficilis erit, quod intereſt pro ratione omnes. *Confer Schilterum ff. Exerc.* 49. §. 13. *Diſſ. Groen.* §. 29. *J. D. & D. Menckem.* — Ubi hujus actionis de tigno juncto.

# TITULUS IV.

## Si is, qui teſt. lib. eſſe juſſus, poſt mort. domini ante aditam hered. ſurripuiſſe aut corrupiſſe quid dicetur.

Hæc duo delicta (1) coercentur: 1. §. 14. *(1.) *actione prætoria* (2) in factum, qua is, qui teſtamento liber eſſe juſſus eſt, ob furtum jacenti hereditati factum in duplum condemnatur: A

*(2.) actione prætoria in factum, qua is, qui teſtamento liber eſſe juſſus eſt, ob damnum *jacenti hereditati* (3) factum, condemnatur in duplum. 2.

## *Notæ variorum.*

(1) [*Hæc duo delicta*] Conſtitutum eſt jure Civili, ut dominus contra ſervum delinquentem actionem privatam habeat, etiam poſt manumiſſionem §. 6. *J. de noxal. act.* idcirco ſane quod dominus manumittendo cenſeatur eā, quod poſt manumiſſionem, contra delinquentem ſe ulturus pœnam, remittere, nam vulgaris ratio. *quod actio, quæ nata non ſit, ſervum manumiſſum ſequi*

*ſequeretur*

*nequeat*, quam ex *l. 18. de furt. l. 3. C. de noxal. act. l ult. C. ſerv. pro ſuo fact.* reddere ſolent vid. *Vinn. in not. ad d. §. 6.* principium petere, aut ſaltem non ultima eſſe videtur. Eamdem conſequenter confirmat *JCTUS in l. 1 §. 1. h. t.* ſervum teſtamento manumiſſum, ob furtum vel damnum jacenti hereditati factum, non teneri, cum neque ut ſervus coerceri queat, ob ſpem libertatis, neque ut liber damnandus ſit, cum hereditati, hoc eſt, domino, furtum fecerit, dominus autem dominove, ne quidem poſt manumiſſionem contra ſervum actionem furti ſimilemve habeat. Sed iſta quidem ratiocinatio fallere videtur, licet enim, juxta fictionem *Romanam*, per hereditatem velut dominam, aut etiam, ſepoſita illa fictione, ſimpliciter futuro heredi furtum fiat, & hoc decepto manumittat, attamen id merito attendendum fuiſſet, quod iſta manumiſſio non ſit *voluntaria*, ſed *neceſſaria*, adeoque ex ea nequaquam conſenſus de remittenda manumiſſi obligatione futura colligi, queat, id quod etiam *Prætor Romanus*, agnovit. Hinc non tantum præceptum naturale de damno ſarciendo ad hunc caſum applicavit, ſed & inſuper delinquentem pœna afficere *h. t.* ſed cum, ob defectum mancipiorum caſus iſte hodie non exiſtat, ideo & applicatio præcepti naturalis, & diſpoſitio pœnalis ignoratur. *Titius.*

(2) [*Actione Prætoria*] Civilis enim actio furti contra ſervum non datur, etiam poſt libertatem, niſi de novo rem ablatam contrectaverit. Ab initio enim locum non habet *l. 17 §. 1. ff. de furt. Stryk.* — Actio non civilis, in damnum ſervum.

(3) [*Jacenti hereditati*] Hinc proprie non ſit furtum, cum nullus hic ſit poſſeſſor *l. 2. §. 15 ff. h. t.* & repræſentatio perſonæ defuncti non obtinet in illis, quæ facti ſunt, qualis eſt poſſeſſio, *arg. l. 19. ff. Ex quib. cauſ. maj.* vide tamen quæ *ſupra dicta ſunt ad* [illegible] *ante adſcriptionem.* n. 23. *Stryk.* Hodie hæ actiones non niſi ad mancipia *Turcica* applicari poterunt. *Mant.* — Jacenti hereditati [illegible] furtum.

# TITULUS V.
## Furti advers. naut. caup. Stabul.

D Hic datur actio contra *nautas*, (1) caupones, ſtabularios, ob furtum ab ipſis (hinc *differt ab all. naut.* (2) caup. ſtab.) vel illorum *operariis*, (3) in rebus illatis admiſſum in duplum. Datur à Prætore ob furtum, *ut in D. L. un. pr. h.* quod quatuor modis committitur, *ut in pr. h.* hinc exercitores interdum *ex vero delicto* (4) tenentur, interdum *ex quaſi* (5) *un. §. 6. h.* non etiam ob factum vectoris *aut hoſpitis*, (6) *L. un. §. 6. h.* Datur dominis rerum ablatarum, & omnibus, quorum intereſt, etiam ipſi nautæ: *l. §. 4.* Contra exercitores, non etiam heredes, ad duplum, *ut in D. §. 3. h.* quod mera eſt pœna: *§. 3. 4.* (*obſ. L. 3. §.* (7) *4. naut. caup. ſtab.*) *vid. Tabor. h. th. 31. pag. 577.* Hæc actio vix eſt *in uſu*, (8) *Fibig D. 12. Cerol. 2. ad §. ſ. de obl. quæ ex quaſi del.*

S P O

### *Notæ variorum*

(1) [*Nautas*] Idem etiam in Aurigis obtinere, verius puto, ſi hi ſint ordinarii, nec ad certum iter ſpeciatim conducti *vid. Tr. de A. F. J Sect. 1. membr 9. §. 35. Strykius.* — Quæ de nautis obtinent ad aurigas ordinarios applicari poſſunt.

(2) [*Differt ab all. naut.*] Nam hæc actio, de qua in fine *libri 4 actum*, non eſt *ex delicto*, ſed ex *quaſi contractu* ſive receptione; Ergo non opus eſt, ut furtum concurrat Vel ſi concurrat non opus eſt probare, à familia Cauponis id commiſſum eſſe, quod tamen in *præſenti actione* probandum, ſed perinde eſt, à quo res ſubtracta, quia non ad pœnam, ſed reſtitutionem agitur. *Strykius.* Non opus videtur aliquod commentari diſcrimen. Supra *Tit. Naut. Caup. ſtabul.* actum eſt de *actione ex recepto*, quæ rem perſequitur, ac ex quaſi contractu deſcendit, quam ab actione hujus tituli differre, manifeſtum eſt, nec de hoc dubitatur aut quæritur. Præterea *in d. Tit.* incidenter ſaltem facta eſt mentio *alius actionis*, quæ ex culpa ſeu quaſi delicto Cauponis cæterorumque oritur, ac in duplum competit, hæc vero *h. t.* ex profeſſo explicatur. Quando autem ipſe Exercitor navis, cauponæ vel ſtabuli, furtum committit, adeoque ex vero delicto tenetur, cum actio dupli, quæ contra ipſum competere dicitur, eſt ordinaria actio furti nec manifeſti Hinc non dubitem, quin ſi Exercitor in furto deprehendatur, quadruplum præ- — Hujus tituli à ſuperiori in *l. 4. ff* propoſita differentia.

præſtare debent. Sed in re obſoleta quorſum ſive ſcuſa abundet! *Textus*

(3) [*Operarum, Conductitium*] ſcil. ubi culpa reus est, quod opera malorum hominum utatur. Aliud in ſervis propter ſe dictis, quia ſervos malos, neceſſarium videtur: Quapropter dominus eum noxæ dedendo liberatur. *Bergk.*

Culpa reus opera malorum hominum utens.

(4) [*Ex vero delicto*] Si *ipſi* quid ſubtraxerint. *Bergk.*

(5) [*Ex quaſi*] Si *familia* ipſorum ſubtraxerit. *Bergk.*

(6) [*Aut hoſpites*] Quia hos non elegit, ſed recipere neceſſitatem habent. Actione civili tamen ex quaſi contractu ad rei reſtitutionem tenetur. Quod intelligendum, modo res ſtetant hoſpite illata, nam quæ ſecreto intulit hoſpitem non obligant. *Menp. ad §. 3. J. de oblig. quæ ex quaſi delict. p. 862. Bergk.*

Quæ quis ſecreto intulit, hoſpitem non obligant.

(7) [*Obſ. l. 3.*] Hæc L. de actione rei perſecutoria ex *quaſi contractu* agit, non de illa, quæ ex *quaſi delicto* oritur. *Bergk.* Vel 3. Loquitur de actione in factum ex Edicto Nautæ, Cauponæ, Stabularii, ubi *hæc omnia*, quæ à præſenti multis modis differt. *Berger.*

(8) [*In uſu*] Scil. ex falſa ſuppoſitione, quia DD. hodie penitus deſiſſe putant. Conſideretur tamen agitur ex *Tit. 9. l. 4.* quia ibi actor nihil amplius probare tenetur, quam ſe res ſuas in diverſorium vel navem intuliſſe. *Bergk.* Hodie infrequentibus accenſeri meretur, non abrogatis, eaque adverſus heredes, moribus haud concedenda eſt, niſi facta ſit litis conteſtatio. §. 1. *J. de perpet. & temp. act. l. 27. C. d. tit. Tabor ad h. l. th. 32. Brunnem. cent. 3. dec. 14. Diſſ. Groen. ad h. l. Menckgen.*

# TITULUS VI.

## Si famil. furt. feciſſ. dicatur.

Hic agitur [1] de furto, & damno injuriâ à familia dato, (*vid. 195. §. 1. de V. S. 1. h.*) cujus nomine alias ſinguli in ſolidum obligantur, *21. §. 9. de furt. 1. §. ſ. ſi is, qui teſtam. liber. 11. §. 2. L. 9. de juriſdict. 34. de injur.* ita, ut dominus omnium reſpectu pœnam ſolvere, aut omnes noxæ dedere teneatur; *9. de juriſdict. 34. de injur.* hic autem prætor ex *delictorum* [2] concedit, an velit omnes noxæ dedere, an verò tantum offerre, ac ſi liber homo furtum feciſſet: *1. pr. h.*
D Inde datur hæc actio quæ in caſu furti eſt, actio furti, certâ *qualitate aucta*, [3] qua agitur adverſus dominum, ob furtum à familia ejus commiſſum, ad hoc, ut vel pœnam furti præſtet, vel familiam noxæ dedat. In caſu damni injuria dati, eſt actio
D L. Aquiliæ, certâ qualitate aucta, quæ datur adverſus dominum, propter damnum injuriâ à familiâ datum, ad hoc, ut vel damnum reſarciatur, vel familia noxæ dedatur.

C Prætor invenit in caſu furti: *1. pr. h. 31. de nox. act.* JCti verò extenderunt ad damnum injuriâ datum, propter identitatem rationis: *32. ad L. Aquil. propter. 1. pr. & §. 1. h.* ob furtum vel damnum injuria à familia factum, *1. §. 1. h.* non etiam *aliud delictum*
S [4] in aliis enim dominus ſingulorum nomine pœnam ſolvere, aut eos noxæ dare
P debet, *1. de juriſd. 34. de injur. 32. ad L. Aquil.* Datur læſo & heredibus, *4. h.* contra familiæ dominum, qui fuit tempore delicti, *31. de nox. act.* ſive poſſideat, ſive poſſidere dolo deſierit: *5. §. 2.* non etiam contra heredes, *arg. 12. de furt. §. 9. I. ad*
O *L. Aquil.* Ad ipſam familiam, vel pœnam, in furto ſc. ad duplum, *1. h.* in damno injuriâ dato ad æſtimationem: quod ſi pœſtremus elegerit dominus, tum tantum præſtandum eſt, ac ſi unus furtum commiſiſſet, & ea æſtimatio, ac ſi ab uno libero homine damnum datum eſſet: *1. pr. h.* hocque contra ſtrictam juris rationem in *favorem domini*: [5] alias ſinguli in ſolidum *obligantur*. [6]

*Notæ variorum.*

(1) [*Hoc ignotum*] Hujus modi actionem eſſe uſum, [illegible] eſt, [illegible] ſunt eſt in uſu, nec [illegible]. Quod ſi tamen [illegible], tum pœna [illegible], graviori aut leviori, [illegible]. *Vinnius.*

(2) [*Familiarum*] [illegible] ob unum delictum unius familiæ ſervorum [illegible]. Dominus. *Bergh.*

(3) [*Quadrupli actio*] [illegible] actio furti [illegible], ad [illegible], non contra [illegible] agi, ſed contra [illegible]. Eadem [illegible] eſt in actione L. Aquiliæ [illegible]. *Bergh.*

(4) [*Aliud delictum*] V. gr. ſi [illegible] [illegible], ſic [illegible], quod [illegible] l. 34. ff. de injur. & hinc per ſingulos [illegible]. *Bergh.*

(5) [*Servorum Domino*] [illegible] ob unum delictum [illegible] l. 32. ff. ad L. Aquil. *Bergh.*

(6) [*Ob quantum*] V. gr. [illegible] l. 34. de [illegible]. Hic tamen ad [illegible] ſi [illegible], non [illegible], [illegible] domum [illegible]. Hodie [illegible] eſt [illegible], [illegible] DD. [illegible] ad [illegible] per [illegible] lib. 49. §. 15. *Bergh.*

# TITULUS VII.

## Arborum furtim cæſarum.

D Hoc eſt privatum (1) delictum, quo quis alienas arbores, ignorante domino,
C celando (2) ejus cauſa cædit doloſe, 1. pr. L. 7. pr. §. 2. h. Orta L. XII. tabb. 1. pr. ſc. ſuccidendo aut ſubſecando, non radicitus (3) evellendo tum enim datur actio L. Aquiliæ 4. 7. §. 2. h. arboris cæſæ contrectatio neceſſaria non
E eſt: 7. §. 2. L. 8. §. 2. h. nam ſi hæc acceſſerit, furtum eſt. Hinc datur ACTIO ar-
D borum furtim cæſarum, quæ eſt legitima, pœnalis, mixta, perpetua. 7. §. 6. qua agi-
† tur contra eum, qui arbores alienas furtim cædit, in duplum. Eſt (1.) directa &
S utilis: (2.) directa & [illegible] quæ tamen diviſio non eſt generis in ſuas ſpecies (4) Datur domino arborum furtim cæſarum: 7. pr. 8. pr. (qui ſi plures ſint, datur omnibus una actio, (5) 8. §. 1. h.) qui tempore cæſionis fuit dominus, licet poſtea dominus eſſe deſierit: (6) 5. h. & heredibus, 7. §. 6. h. & util. domino. 5. §. 1. Non etiam uſufructuario datur directa, ſed tantum utilis: 5. §. 1. h. arg. 12. de aq. & aq. pluv. arcend.
P 5. §. 3. Contra cædentem, 7. §. 4. ſi plures dolo cæciderint, ſingulos in ſolidum, (8) 6. pr. & mandantem, 7. §. 4. (licet Colonus ſit, 9. h. non obſtante, quod ad præſtationem doli etiam ex locato teneatur 9.) uſufructuarium: arg. 5. §. 3. Si ſervi alicujus cæciderint, datur actio noxalis contra dominum 7. §. h. non etiam contra he-
O redes, 7. §. 6. Ad duplum, 7. §. 5. ad quod æſtimandum, multiplicatur omne intereſſe, 8. pr. ante omnia tamen deducitur pretium ligni caſi, (10) 8. pr. adeoque hæc duplum rei perſecutionem continet, nec eſt mera pœna. Concurrunt hic actio
SS L. Aquiliæ, 1. §. 1. Interdictum, quod vi aut clam, 11. h. Locati, 9. h. 11. §. 4. 1. locat. & ſi contrectatæ ſint arbores, actio furti. 8. §. 2. h. Si quis vites cæcidit, tanquam la-
La tro (11) criminaliter punitur 2. h. Hodiè conſtitutione Carol. V. hic nihil novi (12) conſtitutum eſt art. 168. v. Conſt. Sax. [illegible] p. 4. c. 5. v. Ca. 1. q. 83. n. 4. O. P. W. p. 508.

*Notæ variorum.*

Arbor hîc denotat [illegible] [*Ad Rubr.*] Vocabulum arboris hoc loco [illegible], [illegible] complectitur, [illegible] l. 3. §. 3. ff. h. t. *Bergh.*

(1) [*Hoc eſt privatum*] [illegible] delictum hoc nomen, [illegible] publicum eſt, cum [illegible] [illegible], poſt [illegible], pœna publica [illegible], [illegible] Germania [illegible], [illegible], ut non [illegible]

[illegible]

æſtimationem, nec ejus pœnam, multam *Romanus* debere videamur. *Tiraq.*

(2) [*Cædendo*] Ea propter etiam furtim arbor cædi vel deglabrari dicitur in civitatis arundine, quando ſc. ut ad domum nostram perveniat, non ergo *lucri faciendi* gratia, ſic enim datur actio furti, *l. 7. §. 2. ff. h. t. Berg.*

*Deglabratio, ſectio arborum.* (3) [*Non radicitus evellendo*] Hoc factum merito coercetur, quia rarius eſt, tam turbare neque quis arborem radicitus evellat, ſed ſæpe ex laſcivia vel petulantia cædit aut deglabrat, hanc graviori pœna hoc maleficium coercendum eſt. *Tiraq.*

(4) [*L. Aquiliæ*] Mirum eſt, quare in *l. 7. §. 3. ff. h. t.* tunc actio *L. Aquiliæ* dari dicatur, ſi arbor radicitus evulſa, ſed ſi incisa vel deglabrata, ex h. t. agendum eſſe, cum tamen & hic damnum detur. Dicendum itaque ex *l. 8. ff. h. t.* etiam ob arborem furtim cæſam ex *l. Aquiliæ* agi poſſe, ſed hæc actio pinguior eſt, quia in duplum datur: unde ſi prius ex *l. Aquiliæ* actum, hæc actio adhuc locum habet, quatenus quid amplius continet, *vid. Tr. de A. F. J. ſect. 2. membr. 20. § 14. Berg.*

(5) [*Noxalis*] Quando ſcil. ſervus arborem alienam cæcidit, ubi loco datur actio noxalis contra ſervi dominum, qui vel hoc æſtimationem ſolvere tenetur, vel ſervum noxæ dando, ſe liberare poteſt. *Berg.*

(6) [*Inter ſpatium*] Sed dividitur res ita, prout agere, vel damnum *dividitur* eſt, vel etiam, vel etiam datur *in perſona*, vel per *ſervos* ſuos damnum dedit. *Berg.*

(7) [*Una actio*] Ita tamen, ut ſi uni ex illis pœnam præſtiterit eadem, à reliquis amplius conveniri non poſſit. *Berg.*

(8) [*Deferret*] Quia non ratione rei competit hæc actio, ſed ex delicto, quod ſingulus commiſſum, obligationem parit ei, cui damnum per cæſionem arborum illatum eſt. *Berg.*

(9) [*In ſolidum*] Omnes enim peccarunt. Hinc tot ſunt delicta, quot ſunt delinquentes. *Berg.*

(10) [*Pretium ligni cæſi*] V. gr. Arbor integra æſtimabatur 10. *thal.* poſtea cæſa ligna arboris vendi poſſunt pro 2. *thal.* Sic ergo tantum duplicatur ſumma reſidua, ita ut reſtituat 16. *thal. Berlich. p. 5. concl. 52. n. 6. Berg.* — *Æſtimatio ligni cæſi.*

(11) [*Lucro*] Hoc non intelligendum de ſubſtantiæ *ſupplicio*, ſed de pœn necessitate *puniendo*, cum in lucro victum, ita eodem victum, ſubſidia vitæ hominum, *conferr. Tr. d. A. F. J. ſect. 2. membr. 10. §. 10. Berg.* — *Victus eodem tempore loco puniatur.*

(12) [*Nihil novi*] Textus enim allegatus de ſylveſtribus tantum arboribus agit. Ante dubium non eſt, ſi quis arborem frugiferam ſæpius furtim auferat, & quidem in tanta quantitate, quæ excedit 5. *ſolidos*, pœnam ſuſpendii locum habere poſſe. Imò, idem extendi poteſt ad furta arborum Sylveſtrium. Licet non facile ad ultimum ſupplicium deveniatur, *vid. Carpz. p. 4. C. 37. d. 3. n. 5.* Ubi et hoc caſu id fieri poteſt, quia in ſylvis de corpore delicto & quantitate arborum arborumque ablatarum ſatis et certo conſtare non poteſt. *Berg.* — *Furtum arborum ſuſpendii pœna ſæpe.*

(13) [*Vid. Conſtit. Sax.*] De jure *Saxonico*; qui ex petulantia arborem alienam cædit, præter æſtimationem arborum 30. *ſolidos*, qui conſtituunt duas *ſexagenas* antiquas, 40. *Groſſos* pro ſingulis arboribus pœnæ nomine, & inſuper æſtimationem ſolvere tenetur, qui autem lucri faciendi cauſa hoc facit, tenetur pœna furti. *Carpz. c. l. Berg.* Actio arborum furtim cæſarum hodiè infrequens eſt, ſed non abrogata. *Schilter. ad ff. Exercit. 49. § 21.* jure *Sax. El.* qui arbores fructiferas cæciderit, vendiderit, reddiderit, præter certam æſtimationem pro ſingula 2. *ſexagenas* antiquas ſolvere, & cum in ære non habet, pœnam carceris ſubire, quod ſi autem grave damnum dolo malo dederit, carcere, relegatione, vel etiam fuſtigatione puniri jubetur *p. 4. C. El. 37. pr. & §. 1. Mencken.*

# TITVLVS VIII.

## Vi bonorum raptor. & de turba.

*Junge l. 9. C. tit. 33.*

RAPINA (1) (*vid. Perez. h. n. 6. junct. 11. §. 10. de pæn. n. Bocer. tr. de prod. & Latrocin. n. 2. 4. junct. L. 2. §. 1. h.* ſeu deprædatio) eſt privatum delictum, (quatenus ſc. privatus in bonis ſuis læſus civiliter agit: nam quatenus per hoc ſtatus publicus turbatur, *2. §. 1. h.* rectè dicitur publicum, ſed tum *non hujus* (2) eſt loci) quo res mobilis, aliena, dolo malô, vi, palam, lucri gratiâ, rapitur. * Manifeſta eſt, in qua deprehenditur raptor, perinde, ut in furto dictum: H D A

 *non

* non manifeſta eſt, in qua raptor non eſt deprehenſus. *pr. I. de f. h.* (*obſ.* [illegible] *de furt.*) 12. §. *I. de furt.* Objectum eſt res mobilis. § 1. *I. h.* (nam res immobilis dicitur *invadi* ** §. 2. *I. h.* hinc dejectus a poſſeſſione fundi non hanc actionem, ſed *interdictum de vi* ** & vi armata habet: §. 6. *I.* L. 1. 2. C. h.) aliena, etiam utenti, 2. §. 1. cujuſcunque pretii. 2. § 11. *junc l.* 2. *de Publ. in rem* & raptori debita. * 2. §. 18. *de ſ ff* 1. C. h. non etiam propria. nam hujus rapinæ *alter* [illegible]. * §. 1. *I.* L. 2. §. 18. h. Forma eſt (1.) Contrectatio ſive de loco in locum translatio. 1. *pr.* L. 2. *pr.* L. h. (non etiam violenta *laſio.* * *Obſ. Struv. propter.* 2. § [illegible]) (2.) doloſa, 2. §. 18. 20. h. (*hinc excuſ.* [illegible] * hic etiam, qui in jure errat, 2. § 18. 20. h.) (3.) violenta, ut ſc. recuſanti res auferatur manu violenta (vis compulſiva hic non ſufficit, & facit locum actioni, quod metus cauſa. 14. §. 1. *quod metus cauſa.* hodie tamen qui vim compulſivam a viatoribus aliquid *extorquerent*, ** tanquam raptores puniuntur ultimo ſupplicio. *Ca.* [illegible]) (4.) palam facta, (in hoc diſtinguitur generaliter a furto, quod interdum etiam *violenter fit*) * 2. §. 20. (5.) Lucri gratia. [illegible] *pr. h.*

Inde [illegible] ** *f. ff h.* §. 2. *I. h.* lætus privatur poſſeſſione, & [illegible] habet raptorem. [illegible] *pr.* [illegible] actione * civili *VI BONORUM RAPTORUM*, quæ eſt actio prætoria, [illegible] pœnalis mixta qua agunt ii, quorum intereſt, adverſus raptorem, intra annum in quadruplum, *pr. I.* L. 2. *f.* C. [illegible] O. & A. qui hic utilis eſt. [illegible] *f.* C. poſt annum autem in ſimplum. [illegible] C. h. Datur omnibus, quibus datur actio furti. 2. §. 22 & [illegible] contra raptorem, non etiam contra heredes, licet ab iis id ad eos *pervenerit.* ** [illegible] nam ſufficit hoc *condictione furtiva* ** ab illis repeti [illegible] Ad quadruplum, *pr. I. h.* [illegible] C. h. ſive deprehenſus ſit raptor, ſive non *pr. I.* hic verum rei pretium quadruplicatur, 2. §. 13. & quadruplum continet etiam rem ipſam *pr.* [illegible] §. [illegible] *I. de obl.* Judæo contra Chriſtianum datur tantum *in duplum* ** [illegible] C. *de pagan.* poſt annum datur ut in D. *Infamamur etiam*, ** L. *de his, qui not. infam.* Concurrunt cum hac actione (1.) actio furti manifeſti, vel nec manifeſti, [illegible] §. [illegible] *de furt.* (*obſ.* [illegible]) [illegible] *de furt.* elective, ſi tamen prius actione furti nec manifeſti actum eſt, hæc actio competit, quatenus uberior eſt [illegible] §. [illegible] *de O. & A.* (2.) Actio L. Aquiliæ, ſi ſc. res rapta læſa vel corrupta ſit, non etiam actio in factum, *de qua* [illegible] *I. de L. Aquil.* nam illa ſubſidiaria eſt, hæ autem ſunt multæ actiones. (3.) Condictio furtiva: 2. §. 26 h. (4.) rei vindicatio, 2. §. 26 modo actor non ſum [illegible] *quadruplum* ** [illegible] *de condict. furtiv.* Hodie hæ actiones pœnales civiles ubique fere exſpirarunt, *Harpr. ad pr. I. h.* [illegible] *Schultz. ad pr. I. h.* [illegible] & agentibus tantum rei perſecutoriæ, (quamvis quibusdam in locis Judices non vindicent bona rapta, quod improbat. *art.* [illegible] O. C. & R. I. *de anno* 1510. §. Und nachdem an etlichen Orten: *Ca.* [illegible]) & criminalibus & perſecutionibus,

* ſive *ACCUSATIONI* publica, vel extraordinaria perſecutione: *nam ex hoc delicto* ** *agi* poteſt (1.) ad pœnam extraordinariam, ſicut et quocunque privato delicto [illegible] *de privat. delict.* [illegible] *de vi publ.* & *privata*, L. 2. § [illegible] ad ultimum ſupplicium, ſi ſc. qui in itinere homines [illegible] aggreſſus ſpoliavit, atque ſæpius, [illegible] in metallum damnantur, vel in inſulam relegantur [illegible] § [illegible] *de pœn.* CAROLUS V. [illegible] generaliter conſtituit pœnam *mortis* [illegible] *art.* [illegible] *Colon* [illegible] § *Schultz.* [illegible] *ad.* [illegible] genus autem mortis non exprimit. raptores per ſe gladio puniuntur, cadavera eorum rotæ imponuntur, ** *Berlich.* [illegible] *de pœd. & latron.*

*[illegible] n. 5. Cu. 4. c. 31. d. 1.* licet delictum sic prima vice commiſſum. *Cu. 2. q. [illegible] n. 21. & p. 4. c. 31. d. 8. Mev. d. l. n. 2. Hahn. h. §* (*Diſſ. Beſold. in delibat. jur. ad h. t. p. 128. Rauſu. lib. 1. diſſ. 16.*) & *exigua res* [illegible] rapta ſit, *Steph. ad artic. 126. Cu. 2. q. 3 [illegible] n. 45. & p. 4. c. 31. d. 4. §. Mev. d. l. n. 4. Diſſ. Beſold in delib. jur. ad. h. t. p. 128.*

*Damnum dolo malo* COADUNATIS [illegible] hominibus datum hic etiam punitur actione in quadruplum ex hoc Edicto. *[illegible] & §§ ſeqq. h. t. Cu. 2 q. 31. &c.*

Damnum IN TURBA dolo malo datum quoque hic vindicatur actione in duplum *[illegible] pr. & ſeqq. h.* intra annum; poſt annum verò in ſimplum. *vide d. L. 4.*

## Notæ variorum.

(1) [*Rapina*] Eſt delictum & apud omnes Gentes [illegible] [illegible] (1) quod ſit delictum [illegible] (2) quod rapina ſit, vel manifeſta, vel non manifeſta. [illegible] *l. 80 § 3 de furt.* [illegible] in quadruplum [illegible] (3) quod [illegible] *Titius.*

(2) [*Non rapere*] [illegible] *L. Julia de vi publica* [illegible] *Berger.*

(3) [*Obſt.* [illegible]] [illegible] *Berger.* [illegible] *l. 2. § 24. [illegible] Berger.*

(4) [*Bonum*] [illegible] *Berger.*

(5) [*In ordinem de vi*] [illegible] *L. Julia de vi* [illegible] *Berger.* [illegible] *l. 1 § 4 ff de vi & vi arm.* [illegible]

(6) [*Dolum*] [illegible] *Berger.*

(7) [*Alium patiatur*] [illegible] *Berger.*

(8) [*Laſo*] [illegible] *Berger.* [illegible] *l. 4. § 10. [illegible]* damnum in turba ſit commiſſum datum, quod actione in duplum vindicatur *d. l. 4. § 9* [illegible] *de damno dato & de amiſſo.* [illegible] *Berger.*

(9) [*Evocaſſent*] [illegible] *Berger.*

(10) [*Accomparare*] [illegible] 13 [illegible] *Berger.*

(11) [*Probatum ſit*] [illegible] *Berger.*

(12) [*Bene ſit* [illegible]] [illegible] *Titius.*

(13) [*Persequatur*] [illegible] *Berger.*

(14) [*Conditionem furtivam*] [illegible] *l. 7. § 2. ff de condict. furt. Berger.*

(15) [*In dominum*] [illegible] *Berger.*

 (16) In

Crimen delictum [illegible]

(16) [Infamatur reus] Quia omne delictum dolosum infamat. Berg.

(17) [Occulti] [illegible] non manifesti, sed non excludens tamen manifestum, suppositis terminis habilibus, v. gr. si prius actionem vi bonorum raptorum [illegible], actionem [illegible] postea [illegible] furti manifesti [illegible]. Berg. [illegible] manifesto, qui in ipso delicto deprehensus, non est. Berger.

(18) [Confirmatur quadruplum] Quia hoc ipso [illegible] confirmatur. Berg.

Rybberie.

(19) [Nam ex hoc delicto] Id pro [illegible] Robberiam sive Grassationem, [illegible]. Haec est Depraedatio hostilis et violenta l. 3. §. 2. de vi & vi arm. quae cum violatione securitatis publicae [illegible], [illegible] l. 28. §. 10. ff. de poen. [illegible] O. C. a. 126. [illegible] l. 2. a. 13. l. 4. C. [illegible] [illegible] a. 126. (2) [illegible] Mortabs [illegible] [illegible] homicidium [illegible] causa commissum. Hoc consummatum [illegible] [illegible] capitalibus & accedentibus circumstantiis aggravantibus, latrones [illegible] l. 28. §. 10. 15 ff. de poen. [illegible] O. C. a. 130. 137. [illegible] l. 2. a. 13. §. ult. [illegible] [illegible] aliquam arg. l. 2. §. 1. ff. [illegible] 40. §. 23. junge [illegible] Coll. [illegible] 12. [illegible] [illegible] a. 43. 47. Constitutione [illegible] vel [illegible] [illegible], quae ad complendum [illegible] [illegible] arg. l. 2. §. 26. ff. [illegible] junge l. 10. §. 1. ff. de [illegible] Mont.

(20) [Ultimo supplicio] Potest tamen Princeps ex jure aggratiandi dispensare circa mortis supplicium, Cum hoc poena ex jure humano proveniat. Aliud tamen foret, si homicidium [illegible]. Berg.

(21) [Rota [illegible]] Si vero simul homicidium [illegible], [illegible]. Dn. [illegible] pag. 815. Berg.

Rapinae [illegible].

(22) [Aliquid rei] [illegible] Aliquam [illegible], [illegible]. Hoc enim poena [illegible] est, non ex respectu ad quantitatem rei ablatae, sed ex respectu ad laesionem securitatis et via publica, quae ut sancte custodiatur Reip. [illegible] interest. vid. Carpz. p. 4. C. 35. d. 4. Berg.

[illegible]

(23) [Damnum dolo [illegible]] Duo delicta, quae hic memorantur, etiam communia sunt [illegible], quod [illegible] est, damno [illegible] [illegible], sed poenam juris Romani observat, [illegible] [illegible], non [illegible]. [illegible].

(24) [Condemnatur] [illegible], & quidem [illegible], quam [illegible], vocatur Crimen [illegible] poena publica, [illegible]. Carpz. Prax. Cr. qu. 40. n. 2. Berg.

# TITULUS IX.

## De incend. ruin. naufr. rate, nave expugnat.

D **H**ic agitur (1) de damno injuria dato, & rerum contrectatione dolosa occasione incendii, &c. facta. Inde datur actio praetoria, *1. pr.* poenalis mixta, illis, qui dictum delictum passi sunt, contra illud inferentes, intra annum in quadruplum, (cui rei persecutio inest) post annum vero in simplum.

C Causa est damnum injuria vel contrectatione rei (h. e. cum vi, vel sine vi amota res) *3. §. 5.* dolo malo datum, *3. §. 3. 7.* occasione incendii, ruinae, &c. sive

S in ipso incendio, sive occasione ejus. *1. §. 2.* Datur omnibus, quorum interest, contra omnes, *ut in D.* & eorum *receptores*, (2) *3. §. 3.* non etiam *heredes* (3) *4. §. 5.*

Propter hoc delictum etiam potest extraordinarie *criminaliter* (4) *agi. 1 §. 1.*

### Notae variorum.

(1) [Hic agitur de damno] Hic [illegible] qui occasione incendii [illegible] calamitatis [illegible] vel damnum dat, [illegible] ad damni [illegible] tenetur, [illegible] vero [illegible], de qua h. t. [illegible] non est, sed poena [illegible] in [illegible] Germaniae [illegible] locum habet, [illegible] in [illegible], [illegible] delictum aggravantes, [illegible]. Tiron.

(2) [Receptores] Quia hi quando dolo receperunt, participant [illegible] delicto et tamen poena criminali contra ipsos locus sit, [illegible], ut de [illegible] poena [illegible]. Berg.

(3) [Heredes] [illegible], [illegible]

[illegible] *pertinet*, quod ita se habet, si ad eam persequendam agatur poena etiam ad heredem non extenditur, nisi lis sit contestata. [illegible], si quæ [illegible] facta sit [illegible], in solidum tenendum esse. *l. 9. ff. de condict. furtiv.* *Strych.*

(4) [*Committitur*] [illegible] hanc pœnam [illegible], si [illegible] hæc pœna, ut ad [illegible] possit. Et cum hæc pœna, per se satis gravis sit, raro ad hanc [illegible] *Strych.* [illegible] aggravantis, vero est, [illegible] *Grot. ad l. 5. C. de naufrag. Menoch.*

# TITULUS X.

## De injuriis & famoſis libellis.

*Junge L. 9. C. tit. 35.*

INJURIA eſt delictum privatum (*interdum* (1) eſt publicum: *v. Aut. ſi quis in ho- D*
*ro C. de Epiſc. & Cler. Ca. 4. 24. n. 44. Colér. 1. deciſ. 178.*) in contumeliam alte- D
A rius admiſſum. * Verbalis, *1 §. 1.* fit verbis, in alterius contemtum vel con-
tumeliam emiſſis: eſtque vel dicta vel ſcripta, *5. §. 9. 10. h.* atrox &c. *v. inf.* D
a. *h. in O.* * Realis eſt, quæ fit tactu, quod reſpicit alterius contumeliam, C
vel contemtum *1. § 1. L. 15.* &c. *h.* Cauſa efficiens eſt injuriandi voluntas. *3. §. 1. L. 4. h.* D

Injuriam * faciunt omnes doli capaces, etiam Magiſtratus, officio *ſuo abutentes*, (2) *32. h.* Eccleſiæ miniſtri aliquid injurioſum facientes, vel convitium in *certam per-ſonam* (3) dicentes; quo caſu compelluntur ad recantationem: *R. I. de anno 1530. §.* Wir haben *verſ.* Die Prediger. *& R. I. de anno 1548. §.* Damit aber ꝛc. *Ca. 2. q. 96. §. 10. Rauk. de reg. Sec. & Eccleſ. lib. 3. cl. 2. n. 6.* in his tamen animus injuriandi evidentiſſimè probandus eſt. *Berl. 1. dec. 60. num. 2.* NON etiam *infantes*, (4) infantiæ proximi, *furioſi*, (5) *4. §. 1. Ca. 2. Reſp. 58. arg. 40. de R. I.* dormiens, *1. §. 3. de A. vel A. P. arg. 3. §. 1. de injuſt. rupt.* [illegible] *1. §. 3. d. A. vel A. P. v. Clement. un. de homicid. ſimpl. ebrius*, (6) qui plane ignorat, quid agat, *6. §. 7. de re milit.* hic tamen, quia culpoſus eſt, extra ordinem punitur. *Ca. 2. q. 94. n. 22. v.* Würtemb. Hof-Gerichts-Ordnung *p. 3. t. 21. §. ſ. ita ut tamen*, (7) ut inde mens ſit alienata, idque ob juſtam cauſam, delinquit quidem. *5. C.* ſed pœna ipſi mitigatur. *38 §. 8. ad L. Jul. de adult. 4. C. eodem.* Sola pœnitentia nocens eſſe non deſinit. *17. §. 1. de Ædil. Edict. 65. de furt.* Injuria etiam fit per tertium, (quo in caſu & mandans & mandatarius obligatur, *11. pr. §. 3. 4. L. 15. § 48. h.* e. gr. advocatus ex mandato principali convitium adverſario objiciens, *11. §. 3. 4. h. L. 5. C. de accuſ. Ca. 3. Reſp. 62.*) modo mandatum effectui ſit datum: (8) *arg. 52. §. 10. de furt. & arg. 19. de V. S.* plures injuriantes tenentur ſinguli in ſolidum. *34. h.*

* patiuntur omnes non conſentientes, *1. § 5 in f.* (licet uſu rationis deſtituantur, *3. §. 1. h.* etiam ſervus, ſi quid atrocius in ipſum, licet abſque reſpectu ad dominum, ſit commiſſum, *15. §. 35. h.*) qui vel expreſſe nominantur. *15. §. 9.* vel quos impersonaliter locutos intellexiſſe ex circumſtantiis apparet: *arg. 6. de R. C. Berl. 2. concl. 50. n. 61 & Ca. 1 [illegible] 50* licet ſit ignotus, *18 §. 3* aut abſens. *15 §. 7.* aut injuriam alium voluerit injuriare, & in perſona erraverit; *18. §. 3.* b.
*Patiuntur mediatè* * per perſonas alias, *1 §. 3.* ſubjectas ſuæ. * poteſtati, ut (1) C
liberos in poteſtate, *1. §. 3. licet conſentientes*, (2) *1. §. 5. h. Mynſ. ad pr. I. h. n. 12. §.*

modo

modo injuriam fecerit [illegible] &c. [illegible] licet ignoraverit, cujus potius ſit [illegible] (3) Servos, ſi illis atrocior injuria in contumeliam ſuam domini fiat [illegible] non etiam per ſeculares famulos, niſi conſtet illis in contumeliam domini injuriam factam eſſe [illegible] domum expedientibus. [illegible] affectione, ut (1.) [illegible] modo injuriam in genere fecerit, eum eſſe alicujus uxorem: [illegible] (2.) ſponſam [illegible] non etiam ſponſa vel uxor injuriatur per maritum, &c. [illegible] (3.) [illegible] in poteſtate: [illegible] (4.) per defunctum [illegible] heres afficitur injuria [illegible] non etiam per fratres aut ſorores, [illegible] neque quoad actionem civilem, neque quoad criminalem. [illegible]

Forma eſt (1.) injurioſum dictum, etiam conditionale, [illegible] nisi conditio reſpiciat tempus futurum: [illegible] e. g. ſi objiciatur crimen, vitium naturale, [illegible] mendacium. [illegible] aut ſi quis aliquem dicat ironice bonum virum, einen ehrlichen Geſellen [illegible] aut obſcœnis verbis utatur præſertim apud virginem, &c. [illegible] hic tantum datur actio ad deprecationem, item ſi quis non debitorem dicerit debitorem, [illegible] & verba moribus injurioſa, licet natura ſua talia non ſint: e. g. du Pfaff (2.) vel factum, in corpus, utcunque corpus lædendo, [illegible] extra corpus, habitu, [illegible] e. g. verberando [illegible] aut alio tactu, e. g. perſonam vel bona alicujus attrectando, [illegible] uſum, ſcopulis [?] vel impediendo [illegible] invito domum ingrediendo. [illegible] item ſi debitoris oblata ſolutione recuſata, Creditor [illegible] animo injuriandi [illegible] nam hoc deficiente, injuria non eſt, licet ſua natura [illegible] aliquid injurioſum factum ſit [illegible] e. g. ſi quis contra teſtem excipiat tanquam infamem, contra judicem tanquam ſuſpectum, niſi hoc fiat verbis injurioſis, & exceptio non poſſit probari: [illegible] Hæc omnia ſunt probanda [illegible] Probatur autem animus injuriandi ex verbis vel factis ſua natura injurioſis. [illegible] admittitur tamen probatio ex præſumptione contraria [illegible] hunc animum abfuiſſe. [illegible] e. g. in patre præceptore, &c. [illegible] ſi res aliter fieri non poſſit, admittitur reus ad juramentum purgatorium: [illegible] modò aliæ conjecturæ contra pugnent pro eo [illegible] Proteſtatio adjecta hunc animum injuriandi non excludit, [illegible] nec [illegible] objecti criminis. [illegible] (licet reipub. interſit, e. g. homicidium manifeſtari: nam hoc legitimo modo [illegible] abſque animo injuriandi fieri debet [illegible]) aut animus demonſtrandi, [illegible] nam hic utrumque punitur [illegible]

II Per illatam injuriam ſama [illegible] non læditur: [illegible] hanc [illegible] conſuetudo improbatur [illegible] Von den Handwercks Gebräuchen [illegible] Geſellen [?] & injuria talis [illegible] revocari poteſt [illegible] poteſt tamen juſte & neceſſario vindicari ſi inde orta [illegible] latius ſerpat, aliis nocturnis ne delicta maneant impunita, [illegible]

verſ. [illegible] verſ. [illegible] Petr. [illegible] verſ. [illegible] Dan. [illegible] Ad hanc vindictam [illegible] dantur remedia. * generalia, quæ locum habent in omnibus injuriæ ſpeciebus; D

D * CIVILIA, ut actio ÆSTIMATORIA [illegible] §. 7. I. quæ eſt prætoria, §. 7. perſonalis, non pœnalis, [illegible] famoſa, [illegible] de his, qui not. infam. annalis, [illegible] C. (hinc annus & menſis factæ injuriæ exprimendus eſt in libello; alias tanquam ineptus à judice rejicitur: dies autem non eſt neceſſario [illegible] exprimendus. [illegible]) qua agunt injuriam paſſi contra injuriantem, ad injuriæ æſtimationem, ſibi adjudicandam. [illegible] R

† C [illegible] §. [illegible] Cauſa efficiens Prætor, §. 7. & obligatio ex delicto; omnis ſc. injuria: [illegible]

S [illegible] omnibus, injuriam paſſis §. [illegible] hinc ſi uxori alicujus ſit injuria illata, & uterque horum conjugum ſint in patria poteſtate, quatuor perſonis competit hæc actio: nec una actione inſtituta, reliquæ tolluntur: [illegible] filius tamen hanc actionem non intendit, niſi pater ſit abſens, [illegible]) Sed pater ejus nomine, & ſimul proprio nomine agit [illegible] & actionem filio acquiſitam remittere poteſt, [illegible] niſi pater ſit vilis, & filius honeſta perſona [illegible] Non etiam heredibus [illegible] niſi lis ſit conteſtata, [illegible] aut in Camera citatio inſinuata. [illegible] Colleg. um injuriatum tamen agit, licet omnes mortui [illegible] hinc qui tempore injuriæ admiſſæ membra fuerant [illegible] Exerceri poteſt hæc actio per procuratorem [illegible] etiam in rem ſuam [illegible] (Diſſ. [illegible]) Vid. [illegible] Contra injuriantem, [illegible] Carpz. [illegible] etiam fratrem [illegible] Carpz. [illegible] (Diſſ. [illegible]) non etiam heredes [illegible] niſi lite cum defuncto conteſtata, etiam [illegible] ſed inſtantione [illegible] qui ſe defendit etiam per procuratorem [illegible] Carpz. [illegible] P

Ad æſtimationem injuriæ [illegible] hinc actor ſtatim in libello certam ſummam determinare debet, quam temperat judex, pro ratione circumſtantiarum, [illegible] quas ſtidem actor omnes exprimere debet [illegible] hæc æſtimatio interdum fit præjurando, [illegible] quo præſtito, reus ſimpliciter condemnatur in juratam ſummam. vid. [illegible] Hoc delictum habet ſuos gradus; eſt enim injuria vel levis, levior, leviſſima, graviſſima, gravior, gravis, ſive atrociſſima, atrocior, atrox: quæ augetur ex circumſtantiis, (1.) perſonarum, [illegible] (2.) loci, [illegible] (3.) temporis, [illegible] (4.) ipſius facti, [illegible] O

Condemnatus fit infamis, [illegible] de his qui not. infam. modò non leviſſima injuria ſit illata. [illegible] niſi judex famam expreſſe reſervaverit: Jedoch daß ſolches ſeinem Theil an ſeinen Ehren ſchädlich oder nachtheilig ſeye: quod tum demum facere poteſt, ſi juſta adſit cauſa, [illegible] de his, qui not. infam. Carpz. [illegible] de quibus ipſe cognoſcit. Carpz. [illegible] vid. [illegible] E

F Extinguitur hæc actio * (1.) Morte [illegible] ante litem conteſtatam: [illegible] O

[illegible] * (2.) actoris remiſſione * expreſſa, [illegible]

C [illegible] tranſactione (ſed hic tranſigens [illegible]) habetur infamis,



& pro

& pro condemnato: [illegible] *de his, qui not. infam.* [illegible] actione minoris injuriati transigit curator: [illegible] *de furt.* [illegible]) Jurisjurando delatione & præstatione: [illegible] non etiam generali, confeſſione ante uſum dominicæ, aut in mortis agone, nam hæc eſt vindicta legibus permiſſa, publicè utilis [illegible] ibi autem tantum rancor & *odium* [illegible] remittitur [illegible] * tacita, quæ ex *factis* [illegible] elicitur, & dicitur *diſſimulatio* [illegible] Si injuriatus ſtatim poſtea familiaritate cum injuriante *utitur*: [illegible] modò hoc non ex honeſtatis neceſſitate faciat: [illegible] ſi oſculum intervenerit [illegible] non etiam clericus injuriatus, confitentem injuriantem abſolvens, injuriam remiſiſſe videtur nam hic actus fieri intelligitur tantum inter peccatorem & Deum, non hominem & hominem. [illegible] * (3.) præſcriptione annali. [illegible] *de O. & A.* ſive realis fuerit injuria, *ſive verbalis*. [illegible] anno ſc. *utili* [illegible] nam in omni annali perſcriptione annus *intelligitur utilis* [illegible] tamen litis conteſtatione, [illegible] & hodie citationis emiſſione. [illegible] * *EXTRAORDINARIA* Criminalis Perſecutio, quæ eſt extraordinaria perſecutio, qua injuriam paſſus petit, ut reo extraordinaria pœna irrogetur officio judicis, [illegible] Introducta Jure Civili [illegible] propter injuriam quamcunque [illegible] datur illi, cui præcedens actio, [illegible] etiam fratri contra fratrem, [illegible] non etiam procuratori, [illegible] propter periculum ſubſcriptionis: [illegible] (niſi agere velit perſona illuſtris, [illegible]) [illegible] & Judex per modum inquiſitionis *ex officio* [illegible] hoc punit: [illegible] Contra [illegible] injuriantes, [illegible] ut in præcedenti actione, qui ſe per procuratorem non defendunt [illegible] (niſi ſint perſonæ illuſtres [illegible]) contra [illegible] niſi injuria ſit atrociſſima, hoc enim in caſu Judex pro arbitrio repellit procuratorem. [illegible] Ad pœnam extraordinariam: [illegible] interdum pecuniariam fiſco applicandam, manus amputationem, *fuſtigationem*, [illegible] ultimum *ſupplicium*: [illegible]

Hanc actionem tollunt (1.) mortis rei, non etiam *injuriati*: [illegible] (2.) præſcriptio *XX. annorum*, [illegible] *C. de falſ.* [illegible]) non etiam *remiſſio* [illegible] injuriati, [illegible] nec retorſio, [illegible] * Specialis, actiones ſc. quæ ad certas tantum ſpecies injuriarum pertinent, & introductæ ſunt vel * Jure civili, ut actio ex *L. CORNELIA*, quæ eſt actio civilis, pœnalis, qua vindicantur injuriæ reales. *Eſt privata*, [illegible] *de privat.* [illegible]

Datur ex Lege Cornelia [illegible] propter injuriam, manu, vel violento ingreſſu factam [illegible] in domum, etiam conductam. [illegible] injuriam paſſo, contra inferentes. [illegible] Ad pœnam, etiam civilem, [illegible] nam ab initio hæc criminaliter tantum agi poterat. [illegible] Eam tollunt (1.) mors (2.) præſcriptio XXX. annorum ſi *civiliter agatur* [illegible] vel XX. annorum, ſi agitur criminaliter. [illegible] *C. ad L. Corn. de falſ.* [illegible]

*Myns. Finckelth. Berl. p. 5. concl.* [illegible] * moribus nostris, ut * (1.) Actio *RECANTATORIA* [illegible] quæ est actio (*Diss. Hahn.* [illegible]) civilis, [illegible] *Carpz.* [illegible] *Perez. in C.* [illegible] *Gail. 1. O.* [illegible] *Pr. Ex.* [illegible] (non criminalis *Diss. Hahn. &* [illegible]) vel persecutoria, [illegible] quæ agunt injuriam verbalem [illegible] passi, contra injuriantem, ad injuriæ illatæ recantationem & revocationem.

Introducta consuetudine, [illegible] post approbata. *Ord. Cam.* [illegible] und § sonderlich ob injurias verbales. [illegible] *Berl. 5. concl.* [illegible] quæ famam respiciunt, non quæ damnum. [illegible] *Carpz.* [illegible] Datur injuriam passis, ex mente defensionis, & heredibus, licet hi omnino se constituerint [illegible] *Harpr. ad* [illegible] (*Diss. Carpz.* [illegible]) contra injuriantem, [illegible] & heredes, modo hi [illegible] cum defuncto fuerit contestata [illegible] *Richt.* [illegible] *Diss. Carpz.* [illegible] *Ad famæ quodammodo* [illegible] restitutionem [illegible] quomodo revocare recusantes compellantur? [illegible] *Carpz.* [illegible] Revocans non fit infamis, [illegible] (nam hoc nullibi dispositum; & hæc actio est rei persecutoria) sc. infamia juris [illegible] *Harpr. ad §.* [illegible] infamia facti [illegible] tamen sequatur, ut [illegible] Camera hæc fama semper expressè reservatur. *Gail. 1. O.* [illegible] Extinguitur (1.) morte injuriantis ante litem contestatum, (2.) remissione expressa, vel tacita, ut in æstimatoria (3.) præscriptione XXX. annorum [illegible] (nam civilis [illegible] est, & rei persecutoria. *Berl. 5. concl.* [illegible] *Harpr. ad §.* [illegible]) non anno utili, *Diss. Carpz.* [illegible] (4.) retorsione, (5.) si reus doceat, [illegible] quod ex iracundia dixerit, non animo injuriandi, & quod injuriatum habeat pro bono & honesto viro.

Concurrunt æstimatoria & criminalis persecutio [illegible] quia sunt merè pœnales, & ex eodem delicto veniunt. [illegible] (2.) [illegible] (3.) [illegible] *sed pœna quadrupli Harpr. ad* [illegible] *Berl. 5. concl.* [illegible] *Tabor* [illegible] *Diss. Carpz.* [illegible] Cum recantatoria tam æstimatoria, quam extraordinaria criminalis persecutio, cumulantur, [illegible] nam ex uno delicto veniunt, & una est rei persecutoria, altera pœnalis. *Gail. 1. O.* [illegible] *Myns. cent. 2. O.* [illegible] *Perez.* [illegible] *Berl. 5. concl.* [illegible] *Mev. ad J. Lub.* [illegible] *Diss. Carpz.* [illegible]

* (2.) Retorsio est rejectio injuriarum verbalium in ipsum injuriantem, ab injuriato, privata auctoritate, incontinenti, honoris tuendi gratia facta. Licita non est *jure divino* [illegible] aut morali (nam vindictam continet privatam,) vid. *Matt. V.* [illegible] *Luc. VI.* [illegible] *Rom. XII.* [illegible] *I. Petr. III.* [illegible] *Seneca lib.* [illegible] *Quintilian. declam.* [illegible] *de retorsion.* [illegible] *Gail. 2. O.* [illegible] vid. [illegible] *de retorsion. Finckelth.* [illegible] *Suarez. Jul. Clar.* [illegible] [illegible] *Harpr. ad* [illegible] [ [illegible] ] Hodie autem in toto ferè Imperio est extra pœnam, & permissa, *Finckelth. O.* [illegible] *Gail.* [illegible] *Harpr. ad §.* [illegible] *Berl. 5. concl.* [illegible] licet scripta sit, & à Notario cum testibus infinuata, [illegible] *Carpz.* [illegible] Competit ex consuetudine, injuriatis, [illegible] regulariter omnibus, etiam minoribus contra majores absque tutoris auctoritate, *Berl. 5. concl.* [illegible] Propter injurias verbales, quibus aliquid injuriosum falsò objicitur; non etiam [illegible] est licita. Formaliter

ſiter eſt (1.) Rejectio injuriæ, *ut in O.* vel generaliter, e. gr. Tu mentiris, vel ſpecialiter, e. gr. tu mentiris ut fur & latro, tu mentiris in gulam tuam, &c. *V. Strauch. de vind. priv. cap. 10. aph. 11.* (2.) moderata ſc. ad injuriam: hinc ſi alter alterum furem dixerit, hic illum latronem, mutuæ injuriæ ſunt: *Cz. 4. c. 46. d. 11. Myſ. 5. O. 17. n. 5.* [ſic tamen excedens modum raro compellitur ad recantationem, ſed tantum ad deprecationem *Cz. 4. c. 46. d. 11.*] item, ſi retorquens dixerit, tu mentiris, tu biſt ein Schelm ſelbſt *dd. DD.* (3.) incontinenti facta, *dd. DD. Harpr. ad §. 12. I. h. n. 115. Gail. 2. O. 102. num. 5.* ſc. quamprimum ad notitiam injuriæ pervenerit, & hic eo remedio commodè uti potuerit [92] *Harpr. ad §. 12. I.* (4.) privata auctoritate.

Sic *tollitur injuria* [93] & injuriarum actio; nam qui ipſe ſibi Judex extiterit, auxilio Magiſtratus poſtea indignus eſt, *arg. 37. in f. de minor. Cz. 4. c. 46. d. 10. Berl. concl. 64. p. 5. n. 30. Harpr. ad §. 12. I. fere in f. Mev. h. ad J. Lubec. lib. 4 tit. 4. art. 10. num. 7. §. Cz. q. 97. num. 27 Hahn. ad W. h. Nebelkrah. dec. 18.*

*FAMOSUS libellus* [94] eſt injuria ſcripta, qua omiſſo auctoris nomine, delictum certum & famoſum alicui objicitur, & in populum ſpargitur. Non differt ab aliis injuriis ratione cauſæ, ſubjecti, &c. Formale eſt (1.) quod in ſcriptis objicitur certum & famoſum delictum, cujus pœna eſt vel corporis afflictiva, vel infamis. *art. 110. Ord. Crim. Cz. 4. c. 44. d. 4.* (2.) quod auctor non apponat *nomen ſuum*, [95] *art. 110. Franckfurt. O. 30. §. Cz. 4. c. 44. d. 5. & q. 98. n. 4. Piſtor. Schutz. &c.* (*Diſſ. Recte. de injur. c. 2. n. 7. v. Hahn. h. n. 10. Berl. 5 concl. 67. n. 33. Weſenb. h. n. 10. Herz. p. 2. q. 21. propter 5. §. 9. de injur. Ord. Imp. de anno 1577. t. 37. §.* Und ſtrafen / *Carpz. q. 98. n. 25.*) Patientis fama apud graves viros non læditur: *L. un. C. h.* Delinquens obligatur ad pœnam, Jur. Civili *in uſſ. …* [96] ad ultimum ſupplicium, *Roſtoch. ad LL. XII. tabb. p. 147.* quod in deſuetudinem abiit, *5. §. 9. h.* poſtea iterum reſtituta eſt, *L. un. C. de famoſ. libell. v. Ord. Crim. art. 110. Cz. 4. c. 44. d. 1. & q. 44. n. 14. & q. 99. n. 5. & ſeqq.* alibi eſt carceris, vel relegationis pœna, *Harpr. ad §. 1. I. de injur. n. 210.* hæc pœna *mitiganda* [97] eſt propter minimas circumſtantias: *dd. LL.* Propalator reus fit quidem hujus criminis, ſed punitur *mitius*, [98] quam talionis pœna, *Hahn. h. Cz. q. 98. n. 17. v. Cz. q. 98. & 4. c. 44. d. 1.* Præſcribitur actio hæc *XX. ann.* [99] *12. C. ad L. Corn. de falſ.*

*Hic concurrit* [99] actio injuriarum æſtimatoria, vel recantatoria *deſerti*: [100] *Cz. 4. c. 44. d. 5. 6.* non etiam *vicerſa*, [101] *Cz. d. l.*

## Notæ variorum.

(1) [*Retorsione*] Si ſcilicet vel *Magiſtratus in ipſum conſiſterem* [illegible] (2) [*Sine abuſus*] Quando enim Magiſtratus limites officii excedit, induit perſonam privati. Quorſum pertinet vulgatum illud *Judex de ſalſo procedente, de falſo teſtis punit.* [illegible]

(3) [*Certam perſonam*] [illegible] *Brunnem. de J. E. l. 2. c. 18. §. 67* [illegible] (4) [*In-*

(4) [illegible] [illegible] Nec quoque [illegible] [illegible] arg.

(5) [illegible] [illegible] quod [illegible] vid. l. 13. § 2. ff. de [illegible] arg.

(6) [illegible] [illegible] arg. l. 48. [illegible] arg.

(7) [illegible] [illegible] arg.

(8) [illegible] [illegible] arg.

(9) [illegible] [illegible] Conf. [illegible]

(10) [illegible] [illegible] arg.

(11) [illegible] [illegible] arg.

(12) [illegible] [illegible] Junii 1648 [illegible] Berger.

(13) [illegible] [illegible] arg.

(14) [illegible] [illegible] arg. [illegible]

[illegible] arg.

(15) [illegible] [illegible] arg. [illegible]

(16) [illegible] [illegible] arg.

(17) [illegible] [illegible] arg.

(18) [illegible] [illegible] arg. [illegible] vero

[illegible]

[illegible]

(19) [illegible]

(20) [illegible]

(21) [illegible]

(22) [illegible]

(23) [illegible]

(24) [illegible]

(25) [illegible]

(26) [illegible]

(27) [illegible]

(28) [illegible]

[illegible]

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(38) [illegible]

(39) [illegible]

(40) [illegible]

(41) [illegible]

(42) [illegible]

(43) [illegible]

(44) [illegible]

(45) [illegible]

(46) [illegible]

(47) [illegible]

(48) [illegible]

(49) [illegible]

(50) [illegible]

(51) [illegible]

(52) [illegible]

(53) [illegible]

(54) [illegible]

[illegible] *Carpz.* p. 4. q. 96 [illegible] *Berger.*

(55) [*Perpetuator*] [illegible] *Berger.*

(56) [*Ab officio*] [illegible] *Carpz. Pr. Crim. qu.* 109 [illegible] *Berger.*

Poenitentia [illegible]

(57) [*Corpore*] [illegible] *Berger.*

(58) [*Fustigationem*] [illegible] *Carpz. Pr. Crim.* p. 2. qu. 100. n. 37. *Berger.*

Magiſtratû [illegible]

(59) [*Supplicium*] [illegible] *Berger.*

(60) [*Infamiam*] [illegible] *Berger.*

(61) [*XX ann.*] [illegible] *L. Cornel.* [illegible] *Berger.*

[illegible]

(62) [*Remiſſio*] [illegible] *Berger.*

(63) [*Ad personam*] [illegible] *Berger.*

(64) [*Crudeliter agatur*] [illegible] *L. Cornelia* [illegible] *Berger.* [illegible]

Adiſſe ad Palinodiam.

(65) [*Emendatione*] [illegible] *Palinodiam* [illegible] *Berger.* [illegible] *Carpz. Pr. Crim. qu.* 96. n. 38. *Moeschen.*

[illegible]

(66) [*Aut perſonarum*] [illegible] *Berger.*

Per [illegible]

(67) [*Verbalem*] [illegible] *Palinodiam* [illegible] *Carpz.* in *Pr. Crim.* p. 2. qu. 99. n. 3. & *ſeqq. Berger.*

In multibus [illegible]

(68) [*Conſtitutionis*] [illegible] *Berger.*

(69) [*Injuriam verbalem*] [illegible] *Berger.*

(70) [*Aliud quod*] [illegible] *Berger.*

(71) [*Mandans ſit conſtitutus*] [illegible] *Berger.*

[illegible]

 (72) [*Ab-*

(72) [illegible] Tomas

(73) [illegible]

(74) [illegible] Tomas

(75) [illegible]

(76) [illegible] Tomas

(77) [illegible]

(78) [illegible]

(79) [illegible]

(80) [illegible]

(81) [illegible]

(82) [illegible] Tomas

(83) [illegible]

[illegible]

[illegible]

[illegible]

# TITULUS XI.

## De extraordinar. criminibus.

*Junge L. 9. C. tit. 38*

Hæ ſunt,[a] ex quibus nulla privata ordinaria, ad certam pœnam[b] determinata actio datur: hinc etiam ſubſcriptio requiritur; [illegible] In hoc titulo proponuntur (1) ſollicitatio alienarum nuptiarum [illegible] (2) matrimoniorum interpellatio, ſi quis alienæ ſponſæ nuptias appetat, [illegible] (3) injuria, quæ fit ſtatum corrupturum aliquem laudando [illegible] (4) ſi ad ſeparationem poſt litem quis quem compulerit [illegible] (5) dolo ſive aſtutia pueri vel puellæ de ſtupro interpellatio, quod ſi fuerit conſummatum, punitur ultimo ſupplicio, ſi non in inſulam deportatione, [illegible] hodie ſine vi fiat [illegible] (6) Abortus procuratus,[c] quod punitur jure civ. temporario exilio, [illegible] ad L. Corn. de Sicar. non etiam regulariter ultimo ſupplicio. [illegible] jure dicam, Canonico Carolino. D

[a] ultimo ſupplicio, ſi partus fuerit animatus h. e. poſt XL. diem a conceptione [illegible] temporе. [illegible] Medici dicunt, maſculos eſſe animatos trigeſimo poſt conceptionem die, fœminas vero quadrageſimo [illegible] A

[b] inſtigatione ſive cauſa, ſi nondum fuerit animatus, [illegible] (7) annonæ vexatio, quod crimen committunt, (a) qui annonam coemptam ſupprimunt,[d] donec occaſionem conſequantur carius vendendi: qui dardanarii dicuntur [illegible] hi puniuntur negotiationis interdictione & pro delicti gravitate etiam relegatione, aut in metallum damnatione, [illegible] (8) qui ſtateras vel pondera adulterant [illegible] B

horum pœna eſt extraordinaria, [illegible] pro gravitate & diuturnitate delicti quandoque ad ultimum ſupplicium. [illegible] Scopelismus ſive lapidum poſitio quo inimicus in agro inimici lapides ponit, atque cultoribus agrum colentibus mortem minatur [illegible] hic punitur extraordinarie, etiam ultimo pœna [illegible] ſupplicio [illegible] crimen, quo quis rebus ſuis, vel ſibi obligatis vel debitis quas alius poſſidet, antequam eum per judicem evicerit, titulum vel ſignum ſuum impoſuerit, [illegible] (9) Crimen ſacculariorum[e] quod committunt illi, qui pecuniam ex alieno ſacculo malis artibus ſurripiunt, hi arbitrarie puniuntur [illegible] (10) Directariorum, quod committunt illi, qui furandi animo in aliena cœnacula ſe dirigunt, hi puniuntur, ut [illegible] (11) Crimen ceculatorum [illegible] de quo [illegible] Cum hæc ex crimine a perſecutione concurrit actio L. Aquil. etiam actio miſtus ad 20. aureos, ſi liber homo periit, vid. Marth. ad h. t. [illegible] 55

*Notæ variorum*

(1) [Hæ ſunt] Delicta extraordinaria [illegible] [illegible] quæ [illegible] [illegible] [illegible] [illegible] [illegible] eſt [illegible] De [illegible] [illegible] [illegible] [illegible] [illegible] quod [illegible] eſt [illegible] [illegible] [illegible] [illegible] [illegible]

[illegible]

[illegible]

[illegible]

[illegible]

pœnam ordinariâ infanticidii (talis ſcilicet p. 4. C. Xl. 3) pœnæ affici debet, *Dec. El. 78*. Extraneus verò perſona, quæ expoſitionem fecit, conſideratis circumſtantiis, capitali aliave corpora afflictiva, aut leviore pœna plectitur *d. Dec.* Quod ſi autem infans incolumis reperiatur, & ex circumſtantiis de animo ita enecandi eum conſtet, pœna fuſtigationis & perpetuæ relegationis, alias autem arbitraria ſcilicet carcere vel relegatione, locus relinquitur, *d. Dec. 78. jung. Carpzov. P. Crim. q. 10. num. 15. Philip. ad d. Dec. obſ. 2. Meurſius.*

(9) [*Suppreſſione*] Aſſimilantur his & ii, qui in foro plus æquo offerunt, ut alii merces præripiant. Item & illi, qui meſſes immaturas emunt, quod tamen prohibitum in *Ord. Pol. Imp. de A. 1577 tit. 9. Bryt.*

Meſſes immaturas emere prohibitum.

(10) [*Dardanariis*] Hi ita dicuntur à *Dardano* mago quodam, à quo etiam artes magicæ alio nomine dardaniæ dicuntur. *Brunn. h. t. th. 30. Bryt.* *Columella in horto ſuo*

*At ſi nulla valet medicina repellere peſtem,*
*Dardaniæ veniant artes.*

Annonæ fraudatores & Dardanarii.

*Vid. Fabr. Lexicon voce Dardanus.* De cætero annonæ fraudator & dardanarius in eo differunt, quod ille annonam tantum, hic omnis generis alias merces etiam ſupprimat ac cariorem reddit, hinc quoque *Fontapola* audit, quæ differentia ex *l. 6. h. t.* ſatis patet, *vid. A. Math. de crim. de annon. Tabor.*

(11) [*Damnatione*] Imò & interdum pœna gladii, ſi ſcilicet accelaratione frumento effectum, ut multis fame fuerit pereundum, *vid. Diſſ. de Dardanariis c. 6. n. 32. Bryt.*

(12) [*Quandoque ultimum ſupplicium*] Si ſcilicet ſæpius contra Interdictum Magiſtratus hic mercaturæ uſi & grave damnum intulerint civibus, tenere etiam ſupremam committitur. *Bryt.*

(13) [*Aſſine eſt*] Magis huc pertinet Crimen Diſſidationis: quod fit durch Anhängung der Brand-Fackeln / oder Unterſchreibung der Brand-Briefe *Bryt.*

Crimen diſſidationis.

(14) [*Crimen ſecularum*] Secularii & decoctores olim à ſuribus alias ſeparabantur, quia ut hos pœna perennitatis regulariter ſubituros erat futura, illi autem graviori pœna digni videbantur: Sed hodie, cum fures pœna afflictiva coerceant, eadem etiam hac claſſe illi tenendi ſunt, *vid. Dn. Brykes Diſſ. de Decoct. habita Francof. 1667. Tabor.* Pertinet huc etiam improba mendicatio, quæ Morbid Reipublicæ præter neceſſitatem ac conquerendo ſæpe moleſti ſunt, atque ſuam ignaviam alunt. Hi pro ratione improbitatis extra ordinem puniuntur, *arg. l. un. C. de mend. val. junct. Nov. 80. c. 5.* Præcipuè verò exgaſtern certis addiciuntur, ut operi deſtinentur, quam curam Magiſtratibus quoque commendavit, *Ord. Pol. Imp. d. A. 1577 tit. 25. junge Chriſtin. V. 5. Dec. 75. Meurſius.*

Improba mendicatio.

(15) [*Arbitrariè*] Hodie puniuntur, ut fures, & ſi ter iteratum ſit crimen, etiam ultimo ſupplicio, modo certo conſtet de corpore delicti, quod tamen his caſibus valde difficile eſt. *Bryt.*

(16) [*Circumforaneorum*] Qui ſerpentes in foro ſine conſenſu Magiſtratus producere ſolent, & eo ipſo terrorem incutiunt prætereuntibus. Sed etiam hodie plerumque permiſſu Magiſtratus id faciunt, etiam citra pœnam ſunt. *Bryt.*

# TITVLVS XII.

## De ſepulchro violato.

*Junge l. 9. C. 1. 19.*

Hoc eſt crimen [1] extraordinarium; quo corpora ſepulta, vel etiam oſſa, (L)
dolo malo extrahuntur, contrectantur, vel monumenta deformantur, D
A 4. C. Eſt atrociſſimum, & ſacrilegio proximum, 5. C. *De quo agitur* * *ci-* N
*viliter* [2] actione populari de *SEPULCHRO* violato, quæ eſt actio popularis, competens adverſus doloſos ſepulchrorum violatores, ad pœnam civilem D
(actori applicandam) exigendam: eſt prætoria, perſonalis, famoſa, 1. h. Datur à
Prætore. 3. ob delictum, dolo admiſſum, 1. §. 1 Illi, cui res competit, 3 pr. h. qui C
ſi non adſit, vel agere nolit, omnibus de populo, 3. pr. & ex pluribus actoris prætor eligit, cujus juſtiſſima eſt cauſa: 2. de pop. act. L. 3. pr h. contra ſepulchrorum vio- S
B latores, 3. Ad pœnam civilem, * illi ad quem res pertinet, ad intereſſe, 3. pr. quod O
æſtimatur ex injuria facta, lucro violatoris, vel malitia, item ex damno læſi: &
huic nunquam minus, quam 100. aurei, adjudicantur: 3. § 2. h.

*extra-

* extraneo, ad 100. aureos, *3. pr.* & contra doloſum ſepulchri inhabitatorem, ad 200. aureos, (*v. Halm.*) *3. pr. in f.* actori applicandos, *12. de V. S. L. 3. pr. h. Obſ. 21.* [4] *ad SCt. Silan 3. §. 7. h. Wiſenb. h.*) Condemnatus ſit infamis, *1. h.* * Criminaliter, ſi quidem armata manu ſepulchrum violatum eſt, ad ultimum ſupplicium: *3. §. 7.* ſi ſine armis. * corpora vel oſſa extracta ſint, ad vilioris ultimum ſupplicium, honeſtiores deportationem, *ſ. h.*

* monumenta corrupta, reliquiæ contrectatæ, *ad 10. pond.* auri, *4. C. h. Perez.* Locum non habet hæc actio; ſi quis *ejecerit* [3] mortuum ſepultum in eum locum, ubi ſepeliendi jus non erat *1. de relig. & ſumt. 10. §. 1. ad. L. Aquil. ſ. §. 2. quod vi aut. clam 3. §. 3. h. junct. 12. §. 1. de furt. Obſ. 3. de religioſ.* [4] ſi quis exemerit eum, qui ſepeliri non debebat, aut ſi *ſtudioſi medicinæ* [5] anatomici exemerint aliquem? *vid. Marh. ad. h. t. in f.*

2.) Hic proponitur etiam crimen, ſi quis contra Edictum ſepeliverit in civitate: *3. §. 5* quod uſu *non obſervatur.* [6]

SS Si judices neglexerunt violatores ſepulchrorum punire, puniuntur ipſi XX. libris auri. *5. C. h. Zoſ. ad h. t. in f.* Simile eſt huic delicto illud, ſi quis cadavera punitorum *ſpoliaverit.* [7] *de quo vid. Cz. q. 25.* [illegible] *n. 80. & c. & p. 4. c. 4. d. 2.*

## Notæ variorum.

Hoc crimen hodie rarò.

(1) [*Hoc eſt crimen*] Crimen ſepulchri violati [illegible] Tabor.

(2) [*De quo agetur ...*] [illegible] Tabor.

(3) [*Obſ. 21.*] [illegible] Berger.

(4) [*Ad 10. pond.*] [illegible] *Magdeburg* [illegible] *Berger.*

(5) [*...*] [illegible]

*Autor*, ſibi ipſi contrarius, diſſentit ſuperius *de Relig.* & ſ. verbis *ſi quis mortuum*) commodè cum reſtringi poteſt ad locum alienum. *Thoma* Vel ſi. Non loquitur de *hac actione* ſed de actione injuriarum, quæ adverſus eum, qui ſine Decreto ejicit, locum habet. Nota Diſſentit hic *Autor* à ſe ipſo *pag.* 412 *ubi ſine pœna ſepulchri violati effodi non poteſt. Pagenſt. num.* 2.

Concuſſio ad annonam debet ſi ... ſupponat Principis.

(6) [*Studioſi Medicina*] Quamvis utpote hi crimen de ſepulchro violato non committant, non tamen impune forer hîc factum, quia concuſſio ad Annonam cadavera delinquentium ſupponit, & auctoritate Principis fieri debet. vide *Brunnem. Proc. Inquiſit. c.* 10. *n. fin. Strykꝫ.*

Deliſtum de non ſepeliendis in civitate, ſi ... contraria conſuetudo abrogari.

(7) [*Non obſervantur*] Et ſic adeſt hic exemplum, ubi contra legem prohibentem inducta potest contraria conſuetudo. *vid. l.* 3. §. 5. *ff. h. t. Strykꝫ.* Ipſa verò de ſepulchro violato actio pro infrequenti potius, quam abrogata habenda agnoſcenda *Ant. Matth. de crimin. l.* 47. *tit.* 6. *c.* 1. *n.* 29. Illicita vero eſt in civitate ſepultura quia *HADRIANUS* ſcripto pœnam ſtatuit 40. *aur.* in eos, qui in civitate ſepeliunt, quam fiſco inferri juſſit, & in Magiſtratus eadem, qui paſſi ſunt, & locum publicari juſſit, & corpus transferri *l.* 3. §. 5. *ff. h. t.* quod Reſcriptum hodie, quoties cœmeterio publico in civitate conſtituto facta illatio, non obtinet, *vid. Brunnem. ad dict. L. n.* 4. haut incongrue vero dicitur, illum qui in domo ſua ſepulturam privatam ſuſcipere conatus fuerit, dicta pœna teneri *arg. l.* 27. *C. de ſepulchr. Mencken.*

Sepulchrorum ſpoliatores.

(8) [*Spoliaverit*] ubi pœna eſt arbitraria, niſi armata manu, ubi pœna *gladii* vulgo ſtatuitur. *Carpz. d. l.* Quamvis non videam rationem, quare tam ut alii fures ſuſpendio afficiendi, cum nunquam ſine violentia aperiantur ſepulchra. Illa autem ratio, quod mortuus nihil poſſideat, mere civilis eſt, nec mitigat ſpoliatoris malitiam. *Strykꝫ.* Non unum, ſed duplex delictum committitur, ſi quis (1) defunctorum (2) ... cadavera ſpoliaverint, ac utroque ſibi *Carpzov. d. qu.* 83. *n.* 53. *ſeqq.* ac pœnam ſuſpendii locum habere negat, quod quidem, quoad pœnam, manifeſtam habet rationem, bonum omnia veſtes, aliæque res, raro alicujus ſunt pretii, præterea pro rebus nullius non immerito habentur. Hinc etiam non tam ablatio, quam petulantia, qua locus publicus publicus violatur, punitur. Quo ad defunctos vero nulla ratio ſuppetere videtur *Dn. Strykꝫ in not. loc. quare eorum ſpoliatores, non perinde ut alii fures ſuſpendio afficiendi ſint, cum nunquam ſine violentia aperiantur ſepulchra. Et ratio, quod mortuus nihil poſſideat, ſit merè civilis, nec malitiam ſpoliatoris minuat.* Poſſent tamen fortaſſis hic diverſitatis rationes reddi: furtum vero illarum, eſſe frequentius, defunctorum ſpoliationes, magis etiam nocere, cum ejus occaſione ſæpè homicidia fiant, denique non minus fore delinquere, qui res pretioſas cum defunctis tumulo inferunt, aliorumque adeò cupiditatem ſtimulant, quam qui eas auferunt. Hinc cum illi ſint extra periculum, communem hominum ſtultitiam eorum cauſam orare, nec hos adeo graviter coercendos eſſe. *Thomas.*

(9) [*Vid. Carpz. qu.* 73] *Per Conſtit. Electoralem* 34 *p.* 4. diſpoſitum eſt *in* ... ut qui cadaveribus ſuſpenſorum, vel rotæ impoſitorum veſtes detrahit, pœnæ fuſtigationis debeat affici. Quod tamen ad illos, qui pecuniam aut alias res veſtibus occultatas auferunt, non extendendum eſſe, prolixius probat *Carpz. c. l. n.* 62. *& ſeq. Strykꝫ.*

# TITULUS XIII.

## De concuſſione.

D E Est *crimen extraordinarium*, (1) quod committitur terrore, vel alicujus extorquendæ gratia injecto. Parit * *actionem privatam*, (2) condictionem ob turpem cauſam, 3. *C. de condict. ob turp. cauſam* vel extraordinariam perſecutionem, *ad pœnam* (3) pro ratione circumſtantiarum perſonarum, &c. 1 *de calumn. L. t. h.* * accuſationem publicam * ex L. Corn. de falſis, ſi reus *criminis minatur* (4) eo nomine quid extorſerit 2. *h. t. pr. & §.* 1. *ad L. Corn. de falſ.* * ex L. Jul. repet. ſi quis Magiſtr. aut in officio publ. quid acceperit, quo magis aut minus quid ex officio faceret. *L.* 1. 3. 6. *ad. L. Jul. repet. vid Bæer. cl.* 4. *D.* 9. *th.* 31. Huic affinis eſt A a. B b.

*Diſſ.*

[illegible] quæ eſt [illegible] hoſtilis, qua quis per literas, ſigna, aliaque [illegible] ſanguinis & bonorum perſecutionem [illegible] Ich wil der eine Kugel durch den Kopff jagen. [illegible] Hujus delicti pœna eſt capitis. [illegible]

## Notæ variorum.

(1) [illegible] Concuſſio eſt [illegible] De [illegible] Concuſſionem [illegible]

(2) [illegible]

(3) [illegible]

(4) [illegible]

(5) [illegible]

[illegible]

[illegible]

[illegible]

# TITULUS XIV.

## De abigeis, abactore, abigeatore.

*Junge l. 9. C. tit. 17.*

D Abigeatus (1) est crimen extraordinarium, quod committitur [illegible] (2) ex paſcuis, vel aliud pecus ex armentis vel [illegible] (3) ſubtrahendo *l. 1.* [illegible]

2 [illegible] Pœna J. civ. varia, pro ratione circumſtantiarum: [illegible] hodie eadem quæ *furti.* (4) [illegible]

### *Notæ variorum.*

(1) [*Abigeatus*] [illegible]

*equum, bovem, taurum, mulum, duas vel tres aſinos, porcos quatuor vel quinque, decem capras aut oves, ſive uno actu, ſive pluribus, ſtudio & induſtria, de paſcuis vel armentis furando commiſerit.* Cum autem hodie pœna furti ſatis dura ſit adeoque nulla ratio, furtum & abigeatum ſeparandi, amplius ſuppetat hunc uſum Romanorum, quo ad abigeatum ejusque pœnam, ſollicitudinem hodie ceſſare, ac illum pœna furti coercendum conſequitur. *Titius.*

(2) [*Gregem*] Ergo ille, qui bovem aberrantem, vel equos in ſolitudine relictos abduxerit crimen abigeatus non committit *l. 1. §. 1. h. t. Struv.*

(3) [*Jumenta*] *In l. 3. ff h. t.* hæc ita diſtinguuntur, ut qui abſtulerit 10. oves, 5. vel 4. porcos, equum vel bovem unum, *Struv.*

(4) [*Qua furtis*] Hinc niſi *tertia* vice crimen hoc reiteratum ſit, ad ſuſpendium deveniri non ſolet vid. *Brunn. ad Weſemb. h. t. qu. 2. Struv.* Facit *l. 2. ff. h.* Alicubi tamen hoc crimen etiam hodie coercetur arbitrarie, ubi quia gravior crimen, quam furti, pœna dictari queat ob concurrentes circumſtantias non ambigo, Conſ. *Sand. l. 5. t. 9. d. 9. Schulz. ff. Ex. 44. §. 39.* In receptatores relegatione decennali animadvertitur *l. 3. §. f. ff* ſive patriæ conſuetudinem, exilium 10. *annorum* monet *Chriſtin. v. 4. dec.* 103. *n. 4. Mencken.*

# *TITULUS XV.*

## De prævaricatione.

D **P***rævaricatio* (1) * *late eſt crimen*, (2) quo quis prodita cauſa ſua adverſarium juvat: *1. pr. h. 212. de V. S.* quod etiam in extraordinariis judiciis facit advocatus, *1. §. 1. l. 3. §. 2. h. 1. C. de adv. 1.* procurator, *Ord. Crim. art.* 115. tacenda manifeſtando, manifeſtanda tacendo, falſas exceptiones admittendo, proprias omittendo, aut aliter ſcienter faciendo, &c.

a. **propriè ut hic*, (3) eſt doloſa accuſatoris colluſio, in publico judicio cum reo; ut ipſe *abſolvatur*, (4) facta, 1. §. 1. *h. Prævaricatores* (5) in ſignificatione D

B * propria publico judicio accuſantur, *5. pr. 1. ad eam pœnam*, (6) qua liberarunt, reum, *L. p. h.* fiunt infames, *4. h. 7. de publ. jud. vid. 5. h.* E

b. * lata extraordinariè puniuntur: 1. §. 1. *in f L. 2. L. 3. §. 2. h.* Secundum conſtitutionem Carolinam, procurator, qui prævaricatus in judic. civili, vel criminal. fuſtigatur, & relegatur, *art. 115. junct. 38. §. 2. de pœn.* & parti actione mandati tenetur ad intereſſe: *Advocatus hic* (7) arbitrariè punitur, & pars adverſa, quæ accuſatorem, ut ſecum colluderet, induxit: *f. h. 3. §. 1. h.* quomodo etiam rei advocatus *prævaricatur g* (8) *v. Matt. h. t. n. 3 v.* L. 1. 3. §. 2. *h.*

### *Notæ variorum.*

(*Ad Rubr.*) Prævaricatio à varicando dicta eſt, per *l. 212. de V. S.* Varicari autem in tranſverſum ire ſignificat, à varicibus crurum, quibus qui laborant, recta incedere nequeunt, vid. *Weſemb. h. t. n. 1 Struv.*

Prævaricatio reſpicit proceſſum forenſem.

(1) [*Prævaricatio*] Eſt crimen, quod *proceſſum forenſem* reſpicit, eaque ſub notione omnibus gentibus notum eſt. *Romani* ab objecti diverſitate, ſpecialius illud diſtinxerunt eo fine, quo nunc pro publico, nunc *extraordinario* crimine idem haberi poſſet, cujus ſollicitudinis hodie nullum eſſe uſum, cum publica & extraordinaria crimina coincidant, facile liquet. Cæterum qui prævaricabantur corrupti nummis, bovem in lingua habere Romanis dicebantur, vid. *POLLET. hiſtor. for. Rom. l. 4. c. 3. Titius.* Prævaricatio latiſſime eſt Advocati vel procuratoris cum adverſario ſui clientis in hujus præjudicium dolo malo facta colluſio, cauſæque proditio *arg. l. 3 §. 2. ff. h. l. 1 ff h.* Hinc obligat colludentem non tantum ad indemnitatem læſo præſtandam, ſed etiam fuſtigatione aliave pœna arbitraria coercetur *arg. l. 2. ff h.* O. C. *art.* 115. nec intereſt, utrum accepto honorario, an gratis quis prævaricatus ſit, *arg. l. 38. §. 8. & 9. ff de pœn. Carpz. dec.* 93. dummodo dolus concurrat. *vid. Mev. p. 4. d. 173.* probata prævaricatione cauſa quæ prodita eſt, de novo agitur *l. 1. C. de prævaricat. Carpz.*

*Carpz. c. l. n. 18. Laté*, cum in judicio extraordinario; *ſtrictè*, cum in judicio publico ſit colluſio. *Menochius.*

(2) [*Laté eſt crimen*] Potius dicendum, prævaricationem in ſenſu laxiori eſſe, *quando quis pro dono cauſa aliena adverſarium juvat*, nam ſi cauſa verè alicujus ſit propria, is prævaricari nequit, cum rei ſuæ ſit moderator & arbiter, *adeoque* pro ſuo eam negligere atque remittere ei liceat. Juxta hunc ſenſum, (1) Advocatus in quovis judicio publico, extraordinario & privato prævaricatur, ſi cum adverſario colludat *l. 3. §. 2. h.* idem dicendum (2) de accuſatore ipſo quoad judicium publicum & extraordinarium, nam utroque caſu, cauſam Reipublicæ adverſario donat, vid. *Matth. h. n. 4.* ſed (3) in judicio privato actor prævaricari nequit, quia cauſa ipſius eſt, adeoque eam impune perdere poteſt. Quod ſi (4.) Advocatus ſuſpectio cliente cognitoque inſtrumento, ei [illegible], in adverſam partem concedat, ac ſecreta cauſæ, (quæ ſcilicet non in jure, ſed facto conſiſtere poſſunt) hoſti prodat, tum eum non tam prævaricari, quam falſum potius committere crederem *Matth. d. l. n. 5.* quæ ſcilicet criminum diſtinctio, hodie exiguum uſum videtur, cum pœna arbitraria in omnem eventum locum habeat. *Titius.*

Aliud eſt prævaricari, aliud tergiverſari.

(3) [*Propter, ut hoc*] Accuſatoris nomine poſſe intelligi, tum ipſum accuſatorem, tum ejus Advocatum, ut prædictum liquet. Quod ſi quis ab accuſando plane deſiſtat, ille non prævaricari, ſed tergiverſari dicetur *vid. l. 1. §. 3. Matth. h. n. 2.* Utrumque delictum, ob accuſationum raritatem, raro hodie occurrit *Titius.*

(4) [*Abſolvatur*] H. e. Si accuſator ſe ſimulet accuſare inimicum, ſed hac tacita intentione, ut hunc liberet, veros teſtes non producendo, & indicia neganda ſupprimendo. *Beyer.*

(5) [*Prævaricatores*] Si damnum dederint, illud naturaliter reſarcire tenentur, præterea à lege civili puniuntur, ubi notandum, quod prævaricatores inſignificatione lata, etiam nonnunquam calumniæ punire videntur *l. pen. h. t.* adde *POLLET Hiſtor. fori Rom. l. 4. c. 3.* Hodie cum Advocati ſæpè tanquam prævaricentur, Romanorum illorum exiguus eſt uſus, cum ipſe *Autor* ut *Nemo ſit Larebans* indicat, adde *CLASEN ad d. Ord. art. 115 Titius.*

(6) [*Ad eam pœnam*] Hodiè id non ſervatur, ſed pœna tantum extraordinaria iis dictatur. *Beyer.*

(7) [*Advocatus hoc*] Hæc ad jus Civile tantum pertinent, non ad ſanctionem Carolinam, de qua ſuperius [illegible] præcedentia agunt. De cætero, uti verum eſt, quod Advocatus arbitrariè fuerit punitus *l. 1. §. 1. l. 3. §. 2. h.* Ità Rei prævaricatio, aut ſi mavis, corruptio, eo modo punitur, quod ea pro conviſſo habetur, præterquam in ſanguine *l. fin. h. Titius.*

(8) [*Prævaricatur*] Si ſcilicet ſecreta defenſionis alteri parti communicaverit, vel etiam ſubſidia, quibus convinci poſſit reus, ipſi revelaverit. *Conf. Diſſert. de Confeſſione Advocati c. 2. n. 72. ſeqq. Beyer.* Prævaricatur ille, ex ſententia *Matth. d. l.* Si adverſario cauſam donet, ſeu cum eo, ut perimatur Reus innocens, colludat, nam *l. 1. pr. §. 1. l. 3. §. 2. h. l. 3. C. de Advocat. 2.* non diſtinguunt inter Advocatum accuſatoris & rei, id quod ipſa criminis hujus natura etiam ſatis confirmat. Id addo, Rei Advocatum etiam videri prævaricari, ſi etiam innocentem, orationis illicitis pœnæ ſubtrahat, nam ità pariter in publicam peccat rationem, ac ſi accuſator prævaricetur, add. *POLLET hiſtor. fori Rom. l. 4. c. 3.* ubi hoc, ni fallor, exemplo *QUINTILIANI* confirmatur. *Titius.*

# *TITULUS XVI.*

# De receptatoribus.

## *Junge l. 9. C. t. 39.*

R*eceptatio*(1) facinoroſorum eſt crimen extraordinarium, quo quis facinoroſis, eos abſcondendi cauſa in ſuo vel alieno, dolo malo refugium præſtat. Puniuntur Receptatores reorum, etiam privati delicti, *48. §. 1. de furt. 3. §. 3. de incend. Matth. de crim. h. n. 4. Diſſ. Wiſſenb. ad h. t.* licet *campanes*(2) ſint: *Theodor. colleg. crim. D. 9. th. 15. lit. A.* non etiam *parentes*(3) aut cognati ſub hac pœna latitantem cognatum indicare debent, aut *eo nomine*(4) *juramentum purgat onis*(5) præſtare: *a. C. de teſt. juncl. 4. de l. L.* & propter perjurii periculum: *Ca. q. 130. n. 52. & c.* D

§. (*Obſ. arg. 35.*(6)*, de religioſ.*) & propter publ. ſalut. Punitur Jure Civ. ea pœna, E

quam ſuſtineret receptus: [illegible] *de* [illegible] *qui latron.* [illegible] *ad SC.* [illegible] *C. ad L. Jul. de vi publ. L. un. C. de crim.* [illegible] hodiè extraordinariè puniuntur, niſi tuerint [illegible] delicti, *Ca.* [illegible] quæ diſtinctio etiam de jure civili uſitata videtur. [illegible] *C. de his, qui latron.* [illegible] *ad L. Jul. de adult.* [illegible] Mitius tamen puniuntur parentes & affines (qui recipiendo filium &c. non probant delictum, ſed [illegible] miſeria moventur [illegible] *Ca.* [illegible]) item, qui receptum exhibent pœnitentia ducti, [illegible] *de furt. Theodor. coll. crim. D.* [illegible] *lit. A.*

*Sola ſcientia* [1] delicti * commiſſi, (niſi quis à magiſtratu ſub juramento fuerit interrogatus) puniri non poteſt *can. placuit,* [illegible] *Theodor. in coll. crim. D.* [illegible] *Ca.* [illegible] niſi delicta ſint *atrociſſima* [2] nam hæc tacere arbitrariè punitur, *Ca.* [illegible] * *committendi* [3] in * conſcientiæ obligat omnes, ut indicent illis, qui impedire id poſſint: * foro ſoli neminem obligat, niſi delictum ſit atrociſſimum, hujus enim ſcientia obligat eos, qui ex neceſſitate aut poteſtate delictum impedire [illegible], [4] ut eſt magiſtratus, pater, dominus, &c. [illegible] *ad L. Jul. majeſt. Theod. in coll. crim. D.* [illegible] *lit. D.* A a. B b.

## Notæ vertorum.

(1) [Receptatorem] [illegible]

(2) [illegible]

(3) [illegible]

(4) [illegible]

ſtram adige, ut bene ſciam ignorantiam proinnocentia confirmeret. *Bergh.*

(5) [*Juramentum purgatorium*] Adeſt enim hic periculum metus perjurii, & contra quem alius teſtimonium dicere non compellor, illum nec mediante juramento revelare teneor. *Bergh.*

Amor patriæ potior eſt amore cognatorum.

(6) [*Obſ. arg. 35.*] Ex hoc autem colligitur, quod amor patriæ potior ſit amore cognatorum ſed aliud intelligitur, ſi perſona damnum imminens patriæ à cognato. *Bergh.* Ad Obſ. arg. l. 35. *de relig. ibi ſine ſcelere, etiam præmio afficiendum.* & Loqui de crimine proditionis patriæ ibi *etiam, quæ ad patriam defendendum. Bergh.*

(7) [*Socio*] H. e. Si participem de conſilio, vel lucro & ſic magis puniuntur, quod ſint ſocii criminis commiſſi, quam quod fuerint conſpiratores *Bergh.* Id quod juri civili ejusque huic inconveniens eſt. *Ant. Math. de Crimin. l. 47. tit. 10 c. 1. n. 2. Carpz. Pr. Crim. qu. 134. n. 40. ſeqq. Diſſ. Menoch. l. 2. J. Q. l. 2. caſ. 348. n. 3 Menochon.*

(8) [*Sola ſcientia*] Quia nemo in conſcientia obligatur, ut indicet delictum *commiſſum*, factum enim infectum fieri nequit. Aliud itaque in delicto *committendo*, quod reticendum non eſt, quia adhuc poteſt præcaveri. *Bergh.* Ex jure divino Obligatio, ad delicta commiſſa indicanda, non eſt, nam pœnam delinquentibus eo jure ponendam eſſe imponendam, probari nequit, Hinc unicè ex jure humano repeti illa debet, Hoc vero illam etiam regulariter non introducit, quod ſi vero hoc faciat, tum ejus quoque eſt definire, quomodo ejus neglectus in foro civili ſit puniendus. *Titius.*

Nemo in conſcientia obligatur ut crimen perfectum & occultum manifeſtet.

(9) [*Atrociſſima*] In turbationem Reipublicæ tendentia ex. gr. Crimen conſpirationis, læſæ Majeſtatis &c. *Bergh.*

(10) [*Committenda*] Delicta futura & committenda ſciens ex lege ſocialitatis indicare tenetur, ſed obligatio illa non præciſe ligat, ſi quis certo certius delicta non fieri, aut ex indicatione malum metuere debeat, vel alius Magiſtratus illa innoteſcere queant, obligatio ceſſabit. Quoniam autem obligationis violatæ in foro externo ſit habenda ratio, id Lex poſitiva tantum determinat *Titius.*

Delicta committenda, ex lege ſocialitatis indicanda.

(11) [*Potuiſſent*] Communiter hæc conjunguntur; Impedire *poſſe*, & impedire *debere*. *Bergh.*

# TITULUS XVII.

## De furibus balneariis.

H*i ſunt*, (1) *qui veſtimenta*, (2) vel aliud quid in publicis balneis furripiunt: olim extraordinariè *gravius puniebantur* (3) furibus aliis, hodiè iis ſunt exæquati, D E

*Matt. de crim. h.*

### Notæ variorum.

(1) [*Hi ſunt*] Diverſam eſſe delictorum quantitatem, ſatis quidem verum eſt, ſed in ea determinanda, pravo judicio nonnunquam homines utuntur. Eò pertinet, ſi ideo delictum gravius exiſtimetur, quod alterius hæres, ubi lucri ac voluptatis moleſtum ſit, ex quo capite nonnunquam in ſervum fures ultra modum ſævitur, Ex eodem fundamento fortè etiam fluxit, quod fures balnearii cæteris graviùs fuerint apud *Romanos* puniti, nam balnea *Romanis* corruptiſſimos Gentis mores arguunt, ſummamque eorum fuiſſe cupiditatem, aliis notum eſt. Hodie fures balnearii ſunt rariores, aut rectius, ſenſu Romano, planè amplius non occurrunt. Hinc de pœna etiam peculiariter agendum non eſt. *Titius.*

(2) [*Qui veſtimenta*] Hic attendas adhibiti Capſarii, qui mercedem pro ſervandis in balneo veſtimentis acceperunt, *l. 3. §. 1 ff. de offic. Præf. Vigil. Menochon.*

Capſarii

(3) [*Gravius puniebantur*] Quo major enim occaſio furandi in balneis, eo gravior pœna à delicto revocandi. Sed cum hodie pœna furti ſatis gravis ſit, nihil ſpeciale hic amplius obtinebit. *Bergh.*

# TITULUS XIIX.

## De effractoribus & expilatoribus.

EFFRACTIO (1) eſt crimen extraordinarium, quod committitur, ædes, horreum & carceres effringendo. Effractio ædium & horreorum extraordinaria & arbitraria pœna coercetur: *a. t. de furt.* Effractio carceris facta ab incarcerato *capite punitur*: (2) *1. pr. h. t. C. de cuſtod. reorum.* h. e. ſi propter ca- (1.) D E A

 pitale

pitale crimen fuerit convictus, ultimo ſupplicio: ſi propter aliud delictum, morte civili Carpz. p. 3. q. 111. n. 91. Theodor. p. 3. th. 16. lit. D. i mitigatur tamen pœna, ſi conniventia commentarienſium hoc fecerint, 1. in f. h. aut poſtea non potuerint aufugere, Boerr. d. p. D. p. th. 61. aut injuſte fuerint detenti, aut effractio non fuerit violenta, aut propter judicis ſævitiam, aut aquæ aut ignis metu facta ſit, Ca. p. q. 111. n. 96. §. * alio * *commentarienſi* (3) * doloſe eadem pœna punitur, qua tenebatur *evaſus* (4) a. C. de cuſtod. reorum, art. 180. §. So ein Hüter der peinlichen Gefängniß. a B
Ca. p. q. 111. n. 106. hoc tamen *durum videtur*, (5) Ca. d. l. n. 107. C

* culpoſe, punitur extraordinarie, pro quantitate culpæ, l. 12. pr. ff. f. §. 2. C. de cuſtod. reorum, art. 180. c

* extraneo * vi armata, ſive conductis hominibus, gladio punitur, tanquam fracta pace: Carpz. 1. q. 51. n. 50. §. & p. 3. q. 111. n. 87. b D

* ſine vi armata, regulariter punitur extraordinarie: Farin. &c. Carpz. 3. q. 111. n. 81. ſi vero aufugerit reus læſæ majeſtatis, tum effractor ejusdem criminis fit reus, a. in f. pr. ad. L. Jul. Maj. Bach. h. d

(s.) *EXPILATIO*, (6) eſt crimen extraordinarium, quo fures, vel in domibus, vel in plateis homines aggrediuntur, ipſisque veſtimenta vel alias res mobiles, ſine
E vi tamen auferunt. Vindicatur extraordinaria perſecutione, *pro arbitrio* (7) magiſtratus.

## *Notæ variorum.*

(1) [*Effractio*] [illegible] *Thom.*

(2) [*Capite punitur*] [illegible] *Brunn.*

Commentarienſis fugam adjuvans.

(3) [*Commentarienſi*] Qui ſic dicitur, quod in Commentarium, i. e. catalogum [illegible] perſonarum referat [illegible], h. e. perſonas captas, vel [illegible] §. 3 [illegible] de cuſtod. reor. l. 45 [illegible] Brunſ. ad ff. h. t. n. 9. De cætero ad [illegible] pœnam, [illegible] Vel enim (1.) Commentarienſis [illegible] ad effractionem concurrit, [illegible] eadem pœna afficitur, qua [illegible] *Carpz.* [illegible] d. l. n. 100. 101. (2.) *Vel* [illegible] *Carpz.* d. l. n. 108. ſeqq. Vel (3.) [illegible] *Carpz.* d. l. num. 110. add. [illegible] Carol. art. 180. n. 3. in fin. *Thom.*

(4) [*Evaſus*] [illegible] Commentarienſi [illegible] *Brunn.*

(5) [*Durum videtur*] [illegible] *Brunn.*

Expilatio.

(6) [*Expilatio*] Hoc delictum [illegible] in urbibus populoſis, ubi [illegible] homines [illegible] *Carpz.* q. 90. n. 71. ſeqq. *Thom.*

(7) [*Pro arbitrio Magiſtratus*] Hodie [illegible] *Carpz.* [illegible] *Brunn.*

# TITVLVS XIX.
## Expilatæ Hereditatis.

*Junge l. 9. C. t. 32.*

Hoc delictum (1) eſt crimen extraordinarium, quo res hereditariæ vacuæ, (2) D
dolo malo, lucri cauſa contrectantur: *v. 33. de N. G. 12. C. ex quibus cauſ. infam. 1. §. 1. de effractor.* furtum *propriè non eſt* (3) *arg. 1. §. 15. ſi is, qui teſtam. lib. 2. §. 1. h.* non differt à furto, ratione cauſæ efficientis, ſubjecti activi, vel paſſivi, Objectum ſunt res hereditariæ. *vid. emmend. 1. §. 14. de furt.* vacuæ. h. O
eſt quæ à nemine poſſidentur vel detinentur, hinc excluduntur res *à defuncto alteri* (4) commodatæ. *oppignoratæ*, [illegible] *& freq. de furt.* licet adita fuerit hereditas, modò poſſeſſio rerum nondum ſit apprehenſa. *13. pr. de A. vel A. P. 2. §. 1. h.* Extraor- E
dinaria perſecutio inde profecta, eſt remedium ſubſidiarium, quo factum expilatæ hereditatis coercetur, *2. §. 1. ff. C. h.* Competens heredibus & ſucceſſoribus de- S
functi, ita, ut unus factum reliquis coheredibus etiam *propter* (5) *ff. 3. C. h.* Con- T
tra expilatores hereditatis, vitricum, *2. C.* novercam, *3.* avi vel tertii hereditatem expilantem; non etiam ſi filii vel mariti hereditatem *expilet* (6) *ff. C. h. 17. C. de furt. 33. de N. G.* non datur contra *uxorem defuncti*, (7) *add. LL.* nam tum datur *actio rerum amotarum*, (8) vel hereditatis petitio. *1. C. de furt.* nec datur *contra coheredes.* (9) *1. h. 51. pr. ff. pro ſocio. 3. C. fam. erciſc. Theod. in colleg. crim. D. 3. th. 10. lit. G. Perez. n. 3.* niſi manifeſtè conſtet de dolo malo coheredis *ut in D. arg. 45. pro ſocio v. Perez. n. 3. Carpz. 2. q. 83. n. 33.* neque datur contra ſervum, qui teſtamento liber eſſe juſſus O
eſt. *1. pr. §. 1. ſi is, qui teſt. liber.* Ad pœnam extraordinariam, *1. h.* non etiam hodiè *ad pœnam furti* (10) odioſam & exorbitantem *extendendam eſt* (11) *arg. p. de pæn. art. 183. §.* So wol etwas heimlich. *Carpz. q. 83. n. 11.* (*obſ.* (12) *C. Ex quib. cauſ. inf.*) de jure civili carcerem vel relegationem, vel fuſtigationem *§. 1. de effract.* Hodiè ſi expilaverint * cognati, &c. mulctam, carcerem, vel ad ſummum relegationem;
A * extranei, fuſtigationem. *Carpz. 2. q. 83. n. 21.* Condemnatus fit infamis. *12.* E
B *C. ex quib. cauſ. infam.* *Hic concurrunt* (13) *etiam cumulativè* (14) R. V. hereditatis petitio, M
actio ad exhibendum. *9. h. 7. de condict. furt. L. un. C. quand. civ. act. crim.* (*Obſ.* *3.* (15) *ff. C. h.*) *v. Tabor in C. h. d. 1.*

### Notæ variorum.

(1) [*Hoc delictum*] [illegible]

(2) [*Vacuæ*] [illegible]

(3) [*Propriè non eſt*] [illegible]

(4) [*A defuncto alteri*] [illegible]

(5) [*Oppignoratæ*] [illegible]

(6) [*Propter*] [illegible]

[illegible]

[illegible]

(7) [illegible]

(8) [illegible]

(9) [illegible]

(10) [illegible]

(11) [illegible]

(12) [illegible]

(13) [illegible]

(14) [illegible]

(15) [illegible]

(16) [illegible]

# TITULUS XX.

## Stellionatus.

*Jung. l. 9. C. tit. 34.*

D **C**rimen *ſtellionatus* (a) eſt extraordinarium, generale, in ſubſidium, quoties ſpeciale nomen deficit, ita appellatum quo impoſtores ſubdole aliorum fraudandi cauſa machinantur & propterea criminaliter accuſandi ſunt. [illegible] *Tabor*, [illegible] (1) ſciens prudensque rem alteri obligatam, diſſimulata obligatione, quovis modo alienaverit: [illegible] rem alteri oppignoratam per calliditatem diverſis contractibus aliis oppignoraverit [illegible] *de pign. act.* [illegible], non etiam ſi quis duobus in ſolidum eandem rem diverſis contractibus vendidit. [illegible] *ad L. Corn. de falſ.* [illegible] tum enim nominatum eſt crimen, ſc. falſum, [illegible] *LL.* nam hoc factum nunquam poteſt eſſe non damnoſum, quod locus eſt [illegible], (4) aes pro auro oppignoraverit [illegible] *de pign. act.* (5) ignoranti Creditori rem alienam tanquam ſuam oppignoraverit, [illegible] *de pign. act.* licet juramentum non accuſſerit. [illegible] (*Diſſ. Sabin. de mod. uſur.* [illegible]) pecuniam non numeratam exigit, aut ſi creditor pecuniam ſemel acceptam, iterum exigit, [illegible] (6.) Si quis ſtatu liberum pro servo tradit, diſſimulata ejus conditione, [illegible] *de ſtatu lib.* (7.) merces corruptas diſtrahat [illegible] plura habet. *Tabor*, [illegible] (8.) Si quis divitem ſe ſimulet, ut eo gravius in aliorum conſlet [illegible] *de furt.* (9.) qui rem [illegible], ut litigium alienat [illegible] (10.) qui hoſtium adventum denunciat ut prædium vilius comparet *Mat. ad* [illegible]

E [illegible] plura exempla habet. Stellio eſt extraordinaria perſecutio, quia is, qui dolo alterius circumventus eſt, poſtulat, ſtellioni arbitrariam pœnam imponi [illegible]. Datur omnibus, quorum intereſt, contra ſtelliones omnes. Ad pœnam extraordinariam: [illegible] determinandam à judice pro ratione circumſtantiarum. *Ca.* [illegible] non tamen ad mortem extendi poteſt, niſi in Legibus etiam mortis mentio fiat. *Ca.* [illegible] *Non ſolum* [illegible] circa tale negotium admiſſum ſit: quod alias certo de cauſa nominatum eſt e. g. depoſitum, ſocietatem, tutelam, mandatum [illegible] *de his, qui not. inf.* [illegible] (*Diſſ.* [illegible]) 

A. * Delictum excludunt [illegible] ignorantia, [illegible] *de pign. act.* (2) certioratio.

B. * accuſationem impediunt [illegible], domus & res oblata, *quod ſingulare eſt* in hoc delicto. [illegible] Si adverſarius de fraude participet: [illegible] *de pign. act.* (3) ſi pignus plus quam ſufficiat. [illegible] *Hic concurrunt* [illegible] [illegible] (*Diſſ.* [illegible] *de furt.*)

### *Notæ variorum*

[*Ad Rubr.*] [illegible]

[illegible] (1) [*Crimen ſtellionatus*] [illegible]

[illegible]

# TITULUS XXI.

## De termino moto.

Terminus [illegible] hic eſt omne ſignum confines agros diſtinguens: [illegible] hoc crimen eſt [illegible], quo termini eff[illegible] vel [illegible]: Punitur extraordinariè [illegible] corporis afflictiva & fuſtigatione [illegible]

(3) *Ord. Crim. art. 114. v. Berl. 5. concl. 52. Carpz. q. 83.* (4) *n. 67.* Simile delictum perpetrant, qui alveum doloſè alio dirigunt, aut aggeres fluminum *perrumpunt.* (4) *Menoch. de A. I. Q. caſ. 386. n. 5.* SS

## *Notæ variorum.*

Terminorum motio bello quandoque actum dum fuerit.

(1) [*Terminos*] Eos, qui terminos movent ac auferunt, ad damnum inferendum teneri, ac inſuper puniri poſſe, communis ratio hominibus inſinuat, cum porro pœna legibus *Germanorum* ſit definita, hunc ſequor, nihil nos *Romanos* hic debere. Alias apud eos multa ſuperſtitioſa quoad terminos occurrebant, de quibus *MATTH. hoc Titulo.* Terminum motio, eſt terminus finium cauſa poſitus *l. 1. 2. h. t.* extra gradum ſuum ſecta motio, vel finio locorum mutatio *l. 3. § 5. h. t.* obligans ad pœnam Extraordinariam *l. 1. 2. h. t. Carpz. Pr. Crim. p. 2. qu. 83. n. 71 Menochius.*

(2) [*Perſequantur*] Hoc tunc præcipuè obtinet, ſi termini Provinciales moveri, cum hoc quandoque occaſionem belli ſuppeditare ſolent. *Brunn.*

(3) [*Vide Carpz. qu. 83. n. 67*] Ibi docetur, pœnam ſatis ordinariam non habere locum ratione, qui terminos, vel lapides finales, vel arbores conſervandorum finium cauſa poſitos eruunt, ſed pœnam arbitrariam committunt, uti ex ſubſequentibus demonſtratur. *Brunn.*

(4) [*Perrumpunt*] Hoc caſu pœna capitalis eſt, ſi id eveniat in fluminibus *publicis*. [illegible] rupturam aggerum pleſtuntur ex *L. un. C. de Nilo. agger. non rumpend. add. Jod. Markman. de jure aggerum c. 18. n. 5 ſeqq. Brunn.*

# *TITVLVS XXII.*

# De collegiis & corporibus.

Collegium eſt (1) (*ſpecies corporis*) (2) cœtus plurium *ſodalium* (3) vel conventus eorum, qui eandem exercent artem. *1. h.* tres perſonæ conſtituunt collegium, *85. ff. de V. S.* poteſt tamen in una conſervari, *7. § 2. quod cujuſque univerſitatis nomine.* Licita ſunt, quæ *ſuperioris auctoritate* (4) inſtituta vel approbata ſunt: illicita ſunt, quæ ita *approbata non ſunt.* (5) de licitis agit *Berl. 1. d. 105. Matt. de crim. h. t. n. 5.* Illicitorum autem conſtitutio incidit in extraordinarium delictum, & eſt hujus loci. Pœna hujus criminis eſt eadem, quæ majeſtatis, ſi cœtus ſeditioſus contra rempubl. coierit: *1. §. 1. ad. L. Jul. Majeſt.* ſi verò hoc animo non coierint, puniuntur arbitrariè, interdum etiam collegium tantùm *diſſolvitur.* (6) *3. pr. h.* D † E

## *Notæ variorum.*

An genitè Imperante inſtitui poſſint ad collegia?

(1) [*Collegium*] Indoles ſocietatum hominum à Gentibus omnibus intelligitur, quemadmodum circa earum moralitatem, licitæ illæ ſint, nec ne, ex generalibus principiis dijudicari debet. In ſpecie collegium aliquod, illicitum non ſtatim eſt, ſi ſine Imperantis permiſſu inceatur, nam ſi bono fine ſocietas contrahatur (quod ut debet præſumendum) ac temporaria ſit, adeò ut in abuſum non facilè degenerare queat, tum ne quidem tacitus Reipublicæ conſenſus eſt neceſſarius, ſed illa coeundi facultas ex libertate naturali ſuperest. Si vero cœtus aliquis non malo quidem fine confœderetur, ob perpetuitatem tamen ſuam, facile rationes publicas attingere ac turbare queat, tum ſine permiſſu publico talis confœderatio illicita cenſeri debet. Denique ſi dovolè, delictorum gratia, collegium inſtituatur, tum & ipſa conſtitutio male ſe habet, & dicitur delictorum fundamentum eſt, illud a bono Principe nunquam approbatur, ſed diſſolvitur ac alia ratione punitur *h. t.* Ex dictis autem illud ſequitur, quod ſi quivis, etiam temporarius, conventiculorum cœtus, pro crimine habendo reputetur, Respublicam morbida ac mala regimina, id ſatis certum ſit judicium. *Thom.*

Differentia inter collegium & corpus.

(2) [*Species corporis*] Collegium à corpore ita differt, quod illud ſit plurium perſonarum, hoc vero plurium collegiorum conjunctio. *Rebuf. h. t. § 3. in ſin. Brunn.*

(3) [*Sodalium*] Iudem Legibus vivencium, unumquodque collegium enim certis Legibus circumſcriptum eſſe debet: modo non derogent juri publico, nec jurisdictioni Magiſtratus præjudicent, neque excedant, negotiis ad artificium

 ſpectan-

ſpectando. [illegible] ad leg. fin. ff [illegible] Bergh.

(4) [*[illegible]*] Hæc autem confirmatio (1.) à Principe dependet l. 1 pr. ff quod [illegible] in confirmatione [illegible] der Innung [illegible] ſolet clauſulam Reſervatoriam: Solche nach Gelegenheit der Zeit zu vermehren, zu verbeſſern, oder wol gar wegen des Mißbrauchs abzuſchaffen. *Ref. Cr. de A. 1609.* [illegible] (2.) [illegible] vel immediate à Principe, vel mediate [illegible] per Senatum Civitatis. [illegible] c. 38. Unde Quæſitum [illegible] Principis con- [illegible]

[illegible] ab eodem [illegible] tempore [illegible] *Ref. G. Mort[illegible]*.

(5) [*Approbata non ſunt*] [illegible] ipſum, [illegible] in ſocietatem [illegible] non [illegible]. Unde ſi tali collegio [illegible] ob eo legatum ſuerit relictum, hoc non valet *L. collegium* [illegible] *de Hered. Inſt.* [illegible] tamen ſingulis ex eo Collegio recte legatur. *Bergh.*

(6) [*Deficientur*] [illegible] ſi [illegible] vel [illegible] communes habere, [illegible] proprietas. ſi pertinet ad Collegam, [illegible] ipſum Collegium deſinat, [illegible] *Brunnem. ad C. l. 3 n. 2. Bergh.*

Legatum collegio non approbato [illegible]

# TITULUS XXIII.

## De popularibus actionibus.

D S Populares (1) actiones ſunt, quæ dantur omnibus de populo: præprimis habilibus, & integris qui poſtulare poſſunt, *a. h.* etiam minoribus, modo impleverint XVII. ætatis annum: *l. §. 3. de poſtul.* non etiam minoribus, pupilis &c. qui pro aliis non poſtulant, *6.* niſi res ad eos pertineat, his omnibus præferuntur: *3. h. ſ. §. 1. de calum. detect.* Contra heredes (2) non dantur: *ſ. h.* Sunt prætoriæ: *7. de Jurisd. 1. de*
P *pop. act.* Extinguuntur anno.(3) *ſ. h.* Poſt Litis conteſtationem ſiunt propria. (4) *arg. L.*
N *12. ff. de V. S. Bach. ad tit. de procurat. c. 3. n. 3. verſ. in popularibus.*
D

### Notæ variorum.

Crimen populare à publico [illegible]

(1) [*Populares*] Crimen populare à publico [illegible] differt, quod in publico [illegible] ex populo agat, ſed ad vindictam publicam: in populari quisque ex populo, ſed ita, ut regulariter pœnam conſequatur ipſe actor. *Brunn. ad Weſenb.* [illegible] *Bergh.* Hæc deſcriptio quidem ad actiones populares, [illegible] Germanum [illegible] Romanæ, acceptum, nam id quod præcipuum erat, [illegible] *cauſam* & [illegible] omnia, quare hic [illegible] Sunt *actiones a Prætore introductæ, quarumdam delictorum privatorum [illegible], quibus [illegible] modum judiciorum privatorum, dato ſcilicet judice & actionis formula, rei vel pœnæ petitur vid. POLLET [illegible] for. Rom. l. 4. c. 2.* [illegible] O- [illegible] hæc exhibere. [illegible], eſſe pœnam pro varietate actionum popularium quantitate diverſam *l. 9 ff de jurisdict. l. 25 § ult. de SCT Sylan l. 3 princ. ff de ſepulch. viol. l. ult. pr. ff de term. mot. l. 3 § ult. ff de his qui deject. vel effud.* [illegible], cui [illegible] pœna cedat? Sunt, qui Actori, ſunt qui Fiſco integram addicant. Sunt alii, qui eam inter Actorem & Fiſcum dividendam eſſe cenſeant. Primæ [illegible] non ſecuere, [illegible], adeò pœnam regulariter Actori ex eſſe [illegible] eſſe [illegible] *arg. pr. J. de act.* [illegible] & *l. 1. ff. de* [illegible] *pop.* [illegible] *l. 3 pr.* [illegible] *ff. de ſepul. viol.* [illegible] *l. 12 ff de V. S. l. ult. ff. de Longæv. l. 10 ff* [illegible] *l. 5. §. fin. ff de his qui deject.* [illegible] ratio [illegible], ut tanto plures ſint, qui pœnæ [illegible] ſint ad ſuam [illegible] populo actionem [illegible] *arg. l. 1 ff de popular. act. leg. 25 in fin.* [illegible] *de SC Sylan. junct. Carp.* [illegible] Hæc autem eadem ſententia exceptionem habet in *d. l. 25. §. ult. ff de SC. Sylan.* [illegible] Scilicet ut contra heredem, antequam necem defuncti vindicavit, per vim [illegible], habita in ſervos quæſtione, [illegible] ſuos e ſupplicio, vindicaſſet, tabulas teſtamenti aperientem hereditatemque adeuntem, [illegible] popularis detur ad centum aureos inter [illegible] & fiſcum dividendos. Cujus ſingularis [illegible] ratio videri poteſt [illegible] eſſe, quod factum illud heredis non [illegible] ſuerit tam grave quam quidem cætera illa delicta popularia, [illegible] Alii [illegible]. [illegible] Quid enim [illegible] valde in ſe habet factum heredis antequam ulciſcatur occiſi teſtatoris mortem hereditatem adeuntis? Sane poteſt & poſtea ulciſci. Ut adeo factio [illegible] ta-

pudio,

# LIBER XLIIX.

## TITULUS I.

### De publicis judiciis.

D Publica judicia (1) ſunt certa judicia publicorum judiciorum Lege introducta, ad puniendum illa delicta ſive crimina, quibus reſpubl. maximè læditur. pr. §. 1. I. h. L. 1. h. Capitalia ſunt, quæ ſequitur pœna capitalis ſc. quæ tollitur vita naturalis vel civilis. 2. §. 5. pro ſoc. Non capitalia ſunt quibus imponitur alia pœna e. g. relegatio, incarceratio, fuſtigatio, (2) etiam pœna pecuniaria. 2. h. §. 2. 1. Conſtituta ſunt ſpeciali Legis publicæ notatione, 1. h. 5 §. 5 de prævar. v. L. 2. §. 16. 23. de O. J. quas pretium collegit Corn. Sylla; accuratius exhibent Jul. Cæſar. 2. §. 32 de O. J. arg. 11. §. 2. de accuſ. L. 32 de pæn. v. Vult. de Judic. p. 41. De ſubjecto activo eſt ad tit. de juriſdict. & ad tit. de judiciis. de ſubjecto paſſivo agetur in ſeqq. Ipſa delicta recenſentur in L. 1. Modus procedendi olim erat ſingularis; 1. h. hodie eſt vel (3)

D *INQUISITORIUS, quando judex ex officio ſummariter inquirit in delictum & ejus autorem, & delinquenti pœnam promeritam imponit, hic libellus non eſt neceſſarius, nec litis conteſtatio * Carpz. 3. q. 103 n. 11. 12. hic procedendi modus etiam J.Can. & civil. obſervatur c. 17. 2 0. x. de accuſ N. 128. c. jubemus 21. L. 13 de offic. præſid. L. 1. de cuſtod. reorum. 7. C. de accuſ Carpz. 3. q. 103. n. 22. actoris vices hîc obtinet publica fama, (4) & reſpubl. ſalus videtur judicem implorare Ca. d. L. art. 214. & 219. adeò, ut judex inquirere teneatur, bey Verluſt (5) ſeiner Gerricht: Ca. q. 103. n. 32. hic proceſſus eſt vel * generalis (Def. Bach. ad Tr. ad tit. de accuſ. n. 3.) v. Habn. ibidem. quo judex ex officio in genere inquirit (6) in ipſum delictum, & ejus auctorem, an ſc. & à quo delictum ſit commiſſum: hoc facere poteſt etiam inferior (7) vid. Ca. 3. q. 107. n. 14. * ſpecialis, quando judex procedit contra certam aliquam perſonam, in generali inquiſitione indiciis gravatam. (8) ad pœnam determinandam. v. Ca. 3. q. 107. n. 11.

D *ORDINARIUS quando judex procedit per viam accuſationis: hic obſervantur omnia in proceſſu ordinario ſolita, ut libellus (10) litis conteſtatio, probatio, condemnatio, &c. Damnatus fit infamis. (11) 7. h.

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*Notæ variorum.*

* [illegible] populari, [illegible]

(1) [Publica judicia] Ad [illegible] judiciorum publicorum, quæ Romanis [illegible] vidimus. (2) [illegible] POLLET [illegible] (3) [illegible] POLLET d. Tr. l. 3. c. 7. § 9. lib. 2 § 16. 23. de O. J. [illegible] judicia publica, [illegible] POLLET d. Tr. l. 4. c. 1. (5) [illegible] Magiſtratu [illegible] POLLET d. L. 4. c. 1. (4) [illegible] POLLET. l. 4. c. 2. [illegible] ſeqq. [illegible] l. 13 ff. de off. Præſid. O. C. art. 214. [illegible] Reipublicæ [illegible] d. L. 1. O. C. a [illegible]

[illegible]

[illegible]

# TITULUS II.

## De accuſationibus & inſcriptionibus.

*Junge L. 9. C. tit. 2. 6. l. 5. 1. 1. 2.*

A *ccuſatio* [illegible] eſt criminis ad judicem *delatio*, [illegible] vindictæ publicæ cauſa facta, [illegible] C. de his, qui accuſ. D

*Accuſant omnes*, [illegible] (Volentes, L. [illegible] C. [illegible] 8
[illegible] eo tamen non exiſtente, judex neceſſario inquirit: [illegible] pluribus concurrentibus, quorum *æque intereſt*, omnes uno libello reum accuſant [illegible] non æque intereſt, judex habita circumſtantiarum ratione *unum eligit*. [illegible] qui vero accuſatione inſtituta ſuperveniunt, repelluntur, [illegible] niſi deſerta fuerit prorſus accuſatio, aut alio modo impedita, ne promoveri potuerit [illegible] accuſatore mortuo &c. alius agit intra [illegible] dies utiles. [illegible]) qui non impediuntur, ut infantes, &c. nec prohibentur, ut (1.) Mulieres, [illegible] C. de his, *qui accuſ. non poſſ. propter* [illegible] niſi crimen læſæ majeſtatis, [illegible] *ad L. Jul. maj.* annonæ. [illegible] *ad L. Jul. de annon.* Sacrilegii, [illegible] C. *de Epiſc. & Cler.* aut ſi ſuam ſuorumque injuriam perſequantur [illegible] (2.) Pupilli, [illegible] (qui tamen ſuam & ſuorum injuriam autore tutore perſequuntur [illegible] C. *de acc. proſ.* [illegible]) & *Milites*, [illegible] C. *de acc. proſ.* niſi certis in *caſibus* [illegible] *Vid. Menoch.* [illegible] (3.) Servi, [illegible] C. *de his, qui accuſ. non poſſ.* propter [illegible] niſi in crim. majeſt. [illegible] *ad L. Jul. majeſt.* aut ſi necem domini vindicent: [illegible] C. *de precib. imper. off.* [illegible] *Menoch.* [illegible] item, ſi ipſis exceptio non opponatur [illegible] (4.) *Filiifamilias*, niſi conſentiat pater, aut accuſare velit propriam uxorem adulterii [illegible] *ad L. Jul. de adult.* (*Obſ.* [illegible] *de his, qui ſunt ſui vel alien. jur.* [illegible]) *Clar.* [illegible] (5.) Suſpecti (a) qui falſum teſtimonium jam ſemel dixerunt [illegible] (b.) qui *jura* infamia laborant, [illegible] C. niſi in crim. majeſt. [illegible] *ad L. Jul. maj.* (c.) *pauperes* qui non habent [illegible] *aureos* [illegible] *de teſtib.* [illegible] (d.) Excommunicati. [illegible] (e.) prodigi [illegible] nam de his eſt ſuſpicio, quod teſtes, &c. corrumpant (f.) Affines & Conſanguinei [illegible] C. *de his qui accuſ. non poſſ.* [illegible] niſi (a.) in ſeveritatem delicta [illegible] (b.) in delicti [illegible] C. *de il. [illegible]* (c.) niſi ſe aut ſuos ab injuria defendant [illegible] & ex eadem ratione prohibentur etiam Alumnus educatorem, [illegible] C. [illegible] Diſcipulus præceptorem, [illegible] Vaſallus dominum [illegible] (7.) *Advocati* [illegible] C. *de locat.* Clerici. *Gail.* [illegible] *de P. P.* [illegible]

E Accuſantur omnes publicorum judiciorum rei, ſervi, liberi, [illegible] maſculi & fœminæ, majores & minores, [illegible] *verſ. in delict.* [illegible] C. *de acc.* [illegible] *pupilli*, [illegible] C. *de acc.* [illegible] modo tutor vel curator accuſat. [illegible] Excipiuntur tamen (1.) *Imperator*, [illegible] *ad L. Rhod. de jact.* & omnes ſuperiorem non recognoſcentes [illegible] *ut quis in ſua cauſa.* [illegible] *quand. appell.* (2.) Legati & reipubl. cauſa abſentes, majores magiſtratus, & alii in [illegible] (3.) Infantes, [illegible] *ad L. Corn. de Sicar.* Furioſi & mentecapti, [illegible] *ad L. Pomp. de parricid.* [illegible] *de offic. præſid.* ſi non delictum ante furorem ſit commiſſum, [illegible] *de requir.*

niſi

[illegible] *de pœn.* [illegible] *Accuſ.* niſi delictum ſit levi-um, & [illegible] tum [illegible] (4.) Abſentes [illegible] tamen nomina in acta publica referuntur, & bona [illegible] nihilque eam [illegible] conceditur [illegible] edicto citantur, & ſi non comparent, (vid. L. [illegible] dicitur, quod per procuratorem comparere non poſſit, [illegible] aut alias tantum velit allegare cauſas abſentiæ [illegible] *de publ. jud.*) intra annum à publicato Edicto, bona annotata [illegible] *fiſco* [illegible] *de requir.* [illegible] *Ord. Crim.* [illegible] *Carpz.* [illegible] niſi (a.) delictum ſit leve, cujus pœna uſque ad relegationem extenditur: [illegible] *Carpz.* [illegible] aut (A.) initio fuerint præſentes, & [illegible] (5.) [illegible] *de publ. jud.* [illegible] & [illegible] quibus pœna pecuniaria irrogatur, ut [illegible] *ad L. Jul.* [illegible] *ad L. Jul.* [illegible] *accuſ.* (6.) Qui [illegible] eſt delatus ratione eundem [illegible] ſi plures ſint, licet ex eo-dem facto deſcendant: [illegible] *accuſ.* [illegible] (7.) [illegible] crimen plurium LL. vindicatur, [illegible] ſimul Senatus permittit [illegible]

*Modus procedendi* [illegible] hic eſt, (1.) *Offertur libellus,* [illegible] Jur. Civ. in ſcriptis, [illegible] ſecundum ordinationem Carolinam nihil refert, oretenus pro-[illegible] accuſatio, ſive [illegible] Jurisdictio [illegible] in eo formando præter nomen judicis, actoris & rei [illegible] (2.) facti narratio, delictum ſc. & omnes circumſtantiæ, ut delicti magnitudo, complices, locus, tempus, annus & menſis, dies & hora regulariter nominanda [illegible] eſt, [illegible] *accuſ.* niſi in ea quæ-[illegible] (3.) Cauſa concludendi, (4.) ipſa concluſio, ſive petitio. Hic etiam [illegible] (5.) inſcribat vel ſubſcribat accuſator, quo ipſo ad pœnam talionis ſe obſtringat, ſi ſuccumbat. [illegible] hæc utrumque in deſuetudinem [illegible] (6.) Hodie in horum locum recepta eſt *ſatisdatio* [illegible] de lite proſequenda, & [illegible] (7.) Litem [illegible] *Carpz.* [illegible] (8.) Probet actor, ſi [illegible] capitalis [illegible] meridiana clarior, [illegible] *de probat.* aut reus ſuam inten-tionem, niſi præſumtio pro eo militet. [illegible] *Carpz.* [illegible] (9.) Sequitur ſententia poſt concluſionem, ejusque executio: *de quibus* [illegible] in ipſa executione, ſi pœna corporalis eſt im-ponenda, proceſſus [illegible] *Carpz.* [illegible]

## *Notæ variorum.*

(1) [*Accuſare*] [illegible]

(2) [*Delator*] [illegible]

(3) [illegible]

(3) [[illegible]] [illegible]

(4) [[illegible]] [illegible]

(5) [[illegible]] [illegible] GELL. [illegible] POLLIT. [illegible]

(6) [[illegible]] [illegible]

(7) [[illegible]] [illegible]

(8) [[illegible]] [illegible]

(9) [[illegible]] [illegible]

(10) [[illegible]] [illegible]

(11) [[illegible]] [illegible]

(12) [[illegible]] [illegible]

(13) [[illegible]] Qui [illegible]

(14) [[illegible]] [illegible]

(15) [[illegible]] [illegible]

(16) [[illegible]] [illegible] Quod [illegible]

(17) [[illegible]] [illegible]

(18) [[illegible]] [illegible]

(19) [[illegible]] [illegible]

(20) [[illegible]] [illegible]

[illegible] ... [illegible] quoque perſuadeat, [illegible] ... [illegible] ſe excuſare velit. *Carpz. qu.* 106 n. 46. *Strryk.*

(32) [*De superiore*] [illegible] ... [illegible] cum tamen nulla [illegible] ... [illegible] *Stryk.*

(33) [*Utrumque confiteantur*] [illegible] ... per exhibitionem [illegible] ... [illegible] *Stryk.*

(34) [*Carcere*] [illegible] ... [illegible] *Stryk.*

(35) [*Impuberibus*] [illegible] ... [illegible] *Carpz. c. l. n. 97. Stryk.*

# TITULUS III.

## De cuſtodia & exhibit. reorum.

*Junge l. 9. C. 1. 3 4. 1.*

Exhibendus [1] eſt reus alibi degens: *7. h. v. L. 3. de re milit. 7. §. 4. L. f. de accuſ. L. 18. §. 15. de pæn. Nov. 60. c. 1. N. 134. c. 4. 5.* quod hodie non neceſſitatis eſt, ſed voluntatis: *Carpz. 3. q. 110. n. 40. 53. plerumque tamen exhibentur* [2] datis literis reverſalibus. *v. Carpz. 3. q. 110. n. 58.*

D EXHIBITUS cuſtoditur * [1.] incarceratione: Eſt autem CARCER locus, A
D in quo homines cuſtodiuntur à magiſtratu, ne aufugiant: Eſt vel * civilis, Der B
† Bürgerliche oder Schuld-Thurn / quæ fit in cauſis civilibus, in quibus regulariter
D nemo in carcerem conjicitur, niſi certis de cauſis, e. g. Si debitor de fuga ſuſpectus ſit: *v. lib. 42. tit. 3.* * Criminalis, ▶
qui eſt locus, in quo cuſtodiuntur delinquentes, ne aufugiant.

C Incarcerat magiſtratus, *f. C. d. cuſtod. reorum*, qui habet hanc poteſtatem, *2. d. in jus voc.* ſc. qui habet merum imperium; non etiam privati, qui ſi aliquem incarceraverint, incidunt in crimen *læſæ majeſtatis*, [3] *1. C. d. privat. car. tr.* & magiſtratus illud non puniens, incidit in talionis pœnam: *ibid.* (*Obſ. 1. C.* [4] *eodem.*) Hodie hoc delictum punitur arbitrariâ pœnâ, mulctâ, relegatione, aut carcere, *Clar. lib. 5. §. f. q. 15. in f. Carpz. q. 111. n. 10. 11.* ab omni verò pœna excuſantur parentes, præceptores, mariti, qui correlata ſua *ſic corrigunt*. [5] *3. 4. C. de patr. pot.* idem eſt de domino. *L. un. C. de emend. ſerv. Carpz. qu. 111. n. 12.* & qui in flagranti crimine deprehenſum carceri includit, modò hic ultimus non teneatur *ultra 20. horas*: [6] *13. pr. ad L. Jul. de adult. vid. 3. C. de patr. pot. L. un. C. de emend. ſerv.* Propter delictum, cujus pœna eſt ultimum ſupplicium, vel alia corporis afflictiva, aut *relegatio*. [7] *L. 3. h. Theod. in Coll. Orient. D. 4. tit. 12. h. B. Carpz. q. 111. n. 8. 9.* (non etiam leviora delicta, niſi reus ſit perſona levis, & de fuga ſuſpectus, nilque in bonis habeat. *Carpz. q. 111. n. 10.* nec in arbitrariis aut dubiis, niſi veriſimile ſit ex circumſtantiis pœnam eſſe ſecuturam corporis *afflictivam*: [8] *Carpz. q. 111. n. 12 13.*) revera commiſſum, ſc. ſi conſtat. *art. 6. 11. aut. v. 15. §. 41. de injur. 23. C. de pœn. 1. C. h.* de corpore delicti, *2. C. h. Carpz. q. 111. n. 6.* interdum tamen ſufficiunt *conjecturæ*: [9] *art. 11. ſuſp. et fuga* [10] *Carpz. q. 111 n. 35.* in delictis facti tranſeuntis ſufficiunt probabilia indicia, *d. l.* quæ judicis arbitrio relinquenda *art. 18.* in perſona levi leviora, in graviori graviora requiruntur: *Ord. Prov. W'art. p. 317* non etiam ſufficit accuſatoris petitio, *etiam indemnitatis* [11] cautionem præſtantis, *Carpz. q. 111. n. 27. 28.* aut ſocii criminis *nominatio*, [12] *Carpz. q. 111. n. 30.* niſi alia adſint indicia. *d. l. l.*

Reos

Reus deli[illegible]orum: *[illegible]*. Excipiuntur tamen. (1.) *Fœminæ*[14] honeſtæ, *l. & Auth. [illegible] C. de [illegible] divers. jud. Auth. [illegible] N. [illegible]* in delictis autem graviſſimis monaſterio includuntur, vel mulieribus cuſtodiendæ traduntur: *vid. N.* 134. *c. 9.* contra §. (2.) Perſonæ illuſtres, nobiles, Doctores, Clerici, &c. *([illegible] §. 16. de [illegible] loquitur de [illegible], [illegible] hæc non debet. v. 57. [illegible] de [illegible]. 1. [illegible] f. C. [illegible] Theodor. [illegible] D. [illegible] Clar. lib. 5. §. f q. 28. n. 5.* §.) nam hæ perſonæ cuſtodiuntur in caſtro aliquo, vel palatio, vel in camera, vel alio [illegible] loco, aut ſi atrocitas delicti non obſtet, commentarienſibus in propria domo, & proprio hoſpicio committuntur.

Carcer ſit cuſtodia, non pœna: *l. §. 9. de pœn.* hinc (1.) carcer eſto *tolerabilis*, [14] *l. C. [illegible] Cz. q. 111. n. 45.* hic tamen judex circumſtantias æſtimet: (2.) ſervetur reus ad ſententiæ uſque executionem, poſt eam, judici in illum *nullæ partes ſunt.* [15] *[illegible] C.* (3.) in *Carcerem perpetuum* [16] nemo damnandus, *l. C. [illegible] de pœn.* quod tamen licet Jur. Can. *c. quamvis 3. de pœn. in 6. c. 15. in f. de hær. & c. [illegible] §. [illegible]* & conſt. Carol. *art. [illegible] art. 196.* §. Eſt tamen pœna reſpectu incarcerati patientis, *l. §. [illegible] C. h. ([illegible] de injur.) [illegible] D. [illegible] D.* hodie etiam, quoad intentionem magiſtratus. *Ord. Crim. art. 177. & [illegible].* Plures rei alicujus criminis incarcerandi, *ſegregandi*[16] ſunt. *art. 11. in f.*

Si judex aliquem injuſtè incarceraverit, vel innocentem diutius detinuit, incidit in Syndicatum: Cz. *q. 112. n. 70* [*an injuriarum teneatur?*[17] *v. 15 §. [illegible] de injur.*] reus autem præter culpam diutius detentus, ordinariâ pœnâ *mitius puniatur.* [18] *[illegible] C. de pœn. Cz. q. 140. n. 45.* De effractoribus carcerum *vid. ſupr. lib. 47. tit. 18.*

*A carcere liberatur*, [19] qui fidejuſſoribus datis &c. impetrat *ſalv. conductum* [20] *[illegible] per tot. Matth. [illegible]* * [2.] Militum [ad minimum duorum, 14. §. [illegible]] cuſtodiam, *l. h.* quod obſervatur in perſonis honeſtis, præprimis, ſi nondum fuerint convicti, aut confeſſi. * [3.] *Fidejuſſione accepta*, [21] de ſe judicio ſiſtendo: *Vid. tit. de fidejuſſ.* * [4.] Propriæ fidei commiſſione: *l. h.* hoc eſt promiſſioni, unde vel juratoriæ, pro ratione circumſtantiarum deficiente, *incertitudine.* [22]

## Notæ variorum.

(1) [*[illegible]*] [illegible]

(2) [*[illegible]*] [illegible]

[illegible] Brunneman. [illegible]

(4) [illegible] Brunneman.

(Ord. 2) [illegible] Brunneman.

(5) [illegible] Brunneman.

(6) [illegible] Brunneman.

(7) [illegible] Brunneman.

(8) [illegible] Brunneman.

(9) [illegible] Brunneman.

(10) [illegible] Brunneman.

(11) [illegible] Brunneman.

(12) [illegible] Brunneman. [illegible]

(13) [illegible]

(14) [illegible] Brunneman.

(15) [illegible] Brunneman.

(16) [illegible] Brunneman.

(17) [illegible] Brunneman.

(18) [illegible] Brunneman.

(19) [illegible] Brunneman.

(20) [*Alteri ponatur*] Hoc ita in delictis *de-ſignatis*, non item in homicidio, vid. *Diſſ. de carcere ad cuſtodiam c. 4. n. 3. ſeqq.* Hoc quoque ceſſit in reo, qui ſua culpa negando ſcilicet delictum in carcere diutius detentus fuerit, ſibi enim id imputare debet, ac pertinacia atque malitia ſua haud quaquam tueri ſe poteſt. *Carpz. qu. 149. n. 48. Stryk.* Non autem incarcerato prodeſt reſpectu Judicis injuſte incarcerantis actionem injuriarum, dummodo iniquitas, quæ non præſumitur, probetur, *arg. l. 32. ff. de injur. O. C. a. 11. 61. Brunn. ad d. l. 32. n. 3.* Jure Sax. injuſte incarcerato pro ſingulis diebus & noctibus petere licet mulctam 30. *ſol. Brev* 40. *groſſ.* 2 alte Schock L. R. *l. 2. a. 34. L. R. l. 3. a. 45. Carpz. Pr. Crim. qu. 111. n. 71.* Sed ratione rei ſine culpa ſua diu carcere detenti pœnæ mitigationem, *l. 23. C. de pœn. Carpz. Pr. Crim. q. 149. n. 48.* quæ in homicidio doloſo non admittit, *Brunn. ad d. l. n. 4.* ratione rei agentis qui ſe alere nequit, *fac. l. 34. ff. de re judic.* Jus conſequentiæ in carcere alimenta vel ab accuſatore, vel ex fiſco Judicis per Inquiſitionem procedentis, *arg. O. C. a. 157. 176. Ant. Matth. l. d. Crim. l. 48. l. 14. c. 2. Menochm.*

(21) [*A carcere liberatur*] Non tantum carcere, ſed & aliis mediis delinquens ad futuram pœnam ſervari poteſt, ſed in iis adhibendis & prudentia opus eſt, & leges divinæ obſervari debent, hinc in delictis gravioribus, præcipue quibus pœna jure divino univerſali impoſita eſt ſalvus conductus, nonniſi in ſubſidium, cæteris mediis fruſtra adhibitis, concedendus eſt, adde *DECIS. SAXON. 96. Titius.*

(22) [*Salvum conductum*] Hic tamen non ulterius durat, quam donec; vel tortura, vel pœna corporis afflictiva dictata. Imò, illa tacita clauſula etiam ſubeſt: Wenn er ſich gebührnüſſig verhält, hoc eſt, ſi non de novo delinquat. *Stryk.* Salvus conductus quādiu durat?

(23) [*Fidejuſſione accepta*] Judex enim à ſecuritate ſemel accepta diſcedere non poteſt, niſi planè nova cauſa emergat. *Stryk.*

(24) [*Incarceratione*] Præſertim ſi reus *Poſſeſſionatus*, & pœna incarcerationis in pecuniariam poſſit converti. Unde tamen hic eſt, ut de ſe ſiſtendo caveat ſub hypotheca bonorum ad certam quantitatem, ut Judex ipſo evanescente ſummam liquidam habeat, & eo facilius eam exigere poſſit. *Stryk.*

# TITULUS IV.

## Ad l. jul. majeſtat.

### *Junge l. 9. C. tit. 7. 8.*

*Hoc delictum* (1) eſt crimen publicum, quo ſumma in republica poteſtas, modis à LL. notatis, læditur. Probibitum jure naturæ: *Rom. 13. (Diſſ. Riem. dec. 12. q. 1.) Vid. Grot. lib. 1. c. 1. §. 10. n. 4. v. Roſin. de antiq. Rom. c. 62.* Hanc L. autem tulit C. Jul. Cæſ. primum Conſul. Eſt vel Crimen * perduellionis, quo quis aliquid directo *adverſus principem* (2) vel rempublicam hoſtili animo machinatur: *f. h. 1. 2. 3. h.* * læſæ majeſtatis in ſpecie, quo quis aliquid adverſus vel Principis reipublicæ ſuperioritatem, dignitatem & exiſtimationem, non directo, ſed per indirectum machinatur, jura majeſtatis uſurpando.

Committitur doloſa voluntate: *l. §. 1. h.* ſubditorum, (etiam incolarum, ſervorum, provincialium, *19. ad munic. C. Vaſalli* (3) committitunt *feloniam*: (4) *clem. paſtoralis, de ſent. & re jud.* de Clericis. (5) *Vid. c. 29. x. de ſentent. excomm. v. c. 19. cauſ. 22. q. 5.*) non etiam *advenarum* (6) aut extraneorum. *dd. LL. Cz. q. 41. n. 16. Gail. de P. P. lib. 2. c. 13. n. 19. Diſſ. Alberic. Gent. D. 5. ad L. Jul. majeſt. propter 5. C. 9. de offic. præſid.*) omnium, qui rationis uſu deſtituuntur. *arg. l. §. 1. h. 14. de offic. præſid. 12. de ſerv. 7. §. 3. h. Vid. Thom. lib. 48.*

Læditur majeſtas, *(1) in ipſo ſubjecto ſive Principe, &c. *L. 1. h.* hodiè in Imperatore, Rege Romano, modò abſentis Imperatoris *vices gerat*, (7) *arg. 3. pr. C. h.* aut mortuo Imperatore electus ſit: *Cz. q. 41. n. 47. 52.* de *Pontifice*, (8) *Vid. Cz. q. 41.*

*41. n. 30.* non etiam in *Electore.* (8) niſi qua ſunt partes corporis Imperatoris: *A. B. c. 24. junct. L. 5. pr. C. h.* nam proprio jure non habent majeſtatis jura: idem eſt de reliquis PP. qui ſunt vornehmbste Glieder der Kayſ. May. *R. I. an. 1544. & 60.* ferè tamen uſu venit, ut *in eos* (10) tanquam ſubjectum hoc crimen committatur. *C. q. 41. n. 20. Vid. Fibig. ad Exerc. Fr. ſ. q. 2.*

* (2.) in objecto, ipſa ſc. republica evertenda, vel labefactanda, *1. §. 1. h.* nam ſi defecerint ſubditi, &c. Imperator nullus eſt. b.

* (3.) In membris & inſtrumentis *ſuis*, *conſiliariis* (11) ſc. &c. *vid ſup. h. mm. 1. L. 5. pr. C. h.* Læditur Majeſtas in crimine * perduellionis variis modis, quorum *XXXII. ſunt* (12) in *L. 1. & c. ff. 5. C. h. vid. omnino Matth. h. c. 2.* b. C

* læſæ majeſtatis in ſpecie, ſtatuas Principis jam conſecratas violando, *4. §. f. 5. pr.* privatum carcerem exercendo, *L. un. §. 1. C. de privat. carcer.* monetam cudendo *2. C. de falſ. monet. &c.* non etiam Principi *maledicendo:* (13) *Ca. q. 41. n. 13. L. un. C. ſi quis Imperat. maledixerit. Diſſ. Bacov.* c.

In judicio hic ſingulare eſt, ratione * perſonarum (1.) judex hic eſt *ſolus Imperator*, (14) ſecundum DD opinionem *Gigas &c. contra L. 7. §. 3. f. 4. C. h. 1. pr. & §. 4. de off. præfect. urb. conſlat. extravag. quomodo in cauſa læſæ majeſt. proced. ſere in f.* (2.) Accuſant perſonæ etiam inhabiles, infames, mulieres milites, *7. princ. & §. f. L. 8. h.* (3.) Omnes ſubditi hic accuſari poſſunt, licet ab aliis delictis publicis *excipiantur;* (15) *4. C.* etiam poſt mortem. *6. 7. 8. C. h. vid. tamen ſ. in f. h.* (4.) Teſtes etiam inhabiles admittuntur, qui tamen plenè non probant: *7. §. 1. C. h.* (5.) Advocatus hic nullus *admittitur*, (16) *5. §. 2. C. h.* modò factum ſit manifeſtum; D

* modi procedendi (1.) ſummariter procedítur: *Extravag. quomodo in crim. læſ. majeſt. proced. ſere in medio.* Obſervantur tamen ſubſtantialia proceſſus, *de quibus in Clement. ſæpe de V. S.* ut Citatio, *id. LL.* accuſatio aliqualis, quæ reo ad innocentiam docendam communicatur, & ab qualis reſponſio rei ſive litis conteſtatio, quæ audiuntur; tandem ſententia fertur, *alibi comprenda.* (17) (2.) *non appellatur.* (18) *4. §. 3 de injuſt rupt. irrit. teſt. Ord. Cam. p. 2. t. 28. §.* Item/ nachdem. *n. 11. de apell.* d.

*Pœna in* * *perduellione* (19) eſt quod Reus morte punitur, vel gladio, vel in partes ſectione, &c. *5. pr. C. h. O. Cr. art. 124. Ca. q. 41. n. 30.* ejuſque *memoria condemnatur;* (20) *6. 8. f. C.* hinc proceſſus poſt mortem rei inchoari poteſt. *6. 7. 8. C.* nomen rei ex catalogo honeſtorum virorum tollitur, inſignia honoris convelluntur, *24. de pæn.* ædes deſtruuntur, *Ca. q. 41. n. 11.* bona ejus *confiſcantur.* (21) *f. ff. 5. 6. 7. C. h. A. B. c. 24.* doti tamen *non officit* (22) *2. C. ne ux. pro marit.* Filii ejus perpetua *infamia notantur.* (23) incapaces fiunt omnium omninò ſucceſſionum: *5. §. 1. C. h. A. B. c. 24. propter. 5. §. 1. C. h. 1. §. f. quod met. cauſa. Bach. V. 2. D. 32. th. 1. lit. k.* Filiæ autem arcentur à paterna hereditate, ex materna verò capiunt quartam: *5. §. 3. C. h.* Hæc non attinent adoptivos, nec naturales, *Matth. h. c. 3. n. 14. nec nepotes.* (24) *§. f. I. de teſt. tut. junct. L. 3. de pœn.* Hæc pœna *adhuc hodiè* (25) obſervatur *§. A. B. c. 24. & O. Cr. art. 218. Fibig. ad Exerc. Fr. ult. q. 2.* (*Diſſ. Trevnl.* (26) *Schneider vn. Schulz. ad §. 3. I. de publ. jud. Arnolſ Ludov.*) E

* crimine læſæ majeſtatis in ſpecie eſt, pro ratione circumſtantiarum, capitis, deportationis, relegationis: *24. an. de pæn. Ca. q. 41. n. 27.* bona demnati e.

quasi non [illegible], [illegible] neque contra mortuum [illegible] ad [illegible].

## Notæ variorum.

(1) [illegible]

2) [illegible]

[illegible]

[illegible]

(4) [illegible]

(5) [illegible]

(6) [illegible]

(7) [illegible]

(8) [illegible]

(9) [illegible]

(10) [illegible]

(11) [illegible]

(12) [illegible]

(13) [illegible]

(14) [illegible]

[illegible]

(15.) [illegible]

(16) [illegible]

(17) [illegible]

(18) [illegible]

(19) [illegible]

(20) [illegible] CAROLI IV [illegible]

(21) [illegible]

(22) [illegible]

(23) [illegible]

ad [illegible] 26. [illegible] D. [illegible] 490 [illegible] ad [illegible] de publ. jud. [illegible] n. 4. [illegible] esse, [illegible] propter [illegible] art. 24. & Ord. [illegible] art. 218. [illegible] Comite de Ulfeld à [illegible] 24. Julii 1663 [illegible] n. 9. [illegible] C. Graf von Ulfeld [illegible] [illegible] apud D. [illegible] c. 4. n. 16. [illegible] [illegible] [illegible] art. 218 [illegible] [illegible] l. 22. C. de pæn. [illegible]

(24) [illegible]

[illegible] (25) [illegible] per l. 22. C. de pæn. [illegible] c. 4. aph. 6. n. 67. [illegible] [illegible] l. 22. C. de pæn. [illegible] Atque [illegible] n. 10. [illegible]

(26) [illegible] (2.) [illegible] l. 1. l. 2. C. de fodor. [illegible] n. 127 [illegible] l. 5. C. [illegible] qu. 44. n. 43. [illegible]

# TITULUS V.

## Ad L. Jul. de adulteriis coercendis.

*Jung. l. 9. C. tit. 9.*

C D HAnc Legem tulit Augustus, i. e. à patre suo adoptivo Julius dictus. Hic agitur de omnibus delictis carnis * (1.) ADULTERIUM (2) * J. civ. est concubitus cum aliena uxore: [illegible] A B

* J. Can. & b

hodie est crimen publicum, quo per concubitum conjugale vinculum sive thorus conjugalis, violatur (3). * Duplex committit maritus cum alia uxore: Obs[illegible] c

*Ca. q. 53. n. 6.* * ſimplex, einfacher Ehebruch, ſolutus cum uxore, aut maritus cum ſoluta. *Carpz. q. 53. n. 4. 5. & c.* Voluntas doloſa *12. p. h. tit. 4. c. 32. q. 5.* quæ deficit, ſi quis uxorem alterius eſſe ignoret, *Ca. q. 61. n. 45* quod probandum ex circumſtantiis, accedente juramento, *c. nullo 5. de elect. in 6. can. in lectum. c. 32. q. 1. 2. §. Carpz. q. 61. num. 52.* Adulterium committunt puberes, *36.* rationis uſum adepti, [11] *de* Jure div. fœmina nupta, *6. §. 1. L. 14. §. 1. h. (Diſſ. Ca. q. 52. n. 40. Mant. h. t.* [12] *1. n. 11.*) hodie conjuges, *ut in D.* ſponſus & ſponſa, etiam *de futuro*, [13] *13. §. 3. ſ. 7. C. h. Deut. 22. 23. Heſſe IV. 19. vid. L. 4. de fund. dot. 5. C. de bon. quæ lib. 3. ad L. Pomp. de parricid. 13. §. 3. h.* hi tamen mitius puniuntur *Ca. q. 56. n. 37.* uxor meretricio more vivens, *13. §. 2. h.* hoc tamen in caſu *mareſcenter mariti puniuntur.* [14] *22. 29. C. h. Carpz. q. 57. n. 17. ſq.* (alii aliter hanc rem explicant: *vid. Barb. ad W. h. t. Lauterb. coll. ſ. 16. p. 363 Schulz. ad tit. L. de publ. Jud. lit. K.*) & uxor deſerta, hi tamen mitius puniuntur. *Carpz. q. 58.* item conjuges ſeparati quoad thorum & menſam, *Ca. q. 61. n. 53.* Forma eſt ipſe concubitus, ſeminis ac ſanguinis commixtio: attentata matrimonii violatio verum adulterium non eſt. *225. de V. S. Ca. q. 61. n. 2.*

D Hoc crimen vindicatur auctoritate * *PUBLICA*, * *ex officio* * ſi judex competens (*hodie ſecularis,* [15] *Carpz. q. 63. n. 1. vid. tamen c. 1. n. de offic. jud. ord. & c. 3. n. de procurat.*) procedit per viam * inquiſitionis, exiſtentibus indiciis legitimis: *Bocer. de adult. c. 3. n. 194. Ca. q.* [illegible] *125. n. 70.*

F * *ACCUSATIONIS*, * *Accuſare* [16] autem hic illi tantum, quibus ſpecialiter hoc eſt permiſſum, *30. C. h. propter d. L. 30. C. in f. Barb. V. 2. D. 32. th. 2. lit. G. (Diſſ. Wiſſen. Bocer.)* ut marito, patri, fratri, patruo, avunculo: *30. C.* maritus omnibus præfertur intra LX. dies utiles, *jure antiquo* à tempore divortii, *30. §. 1. ſ. h. 11. C. h.* hodie etiam *conſtante matrimonio* [17] ſic poteſt agere: *N. 117. c. 8. Auth. Sed novo jure C. h.* hunc ſequitur pater. *2. §. 1. deinde reliqui* [18] in *L. 30. C. h. a. Barb. V. 2. D. 32. th. 2. G. Wiſſenb. h.* * Accuſantur, hujus criminis rei omnes *Ca. q. 64. n. 1.* Qui ſi litem conteſtentur * affirmative, & factum confiteantur, condemnantur, modò certò de delicto conſtet, per *utriusque partis* [19] confeſſionem, vel indubitata indicia: *1. §. 17. 27. de quæſt. Ca. q. 20. n. 20. 30.*

* negativè, & factum negent, dum accuſator id probat, per indicia certa & indubitata, (ex * naturali ratione, e. g. ſi per annum abſentis uxor gravida fit: *19. C. de R. V. ſ. C. de probat. Bocer. de adult. c. 4. n. 3. 4.* * LL. diſpoſitione, præſumtiones *juris & de jure* [20] e. g. ſi adulterii accuſati ſanguinis neceſſitate ſe excuſaverint, ſeſe tamen poſtea matrimonio junxerint *L. 34. C. h.* aliud exemplum eſt *in N. 117. c. 12. & Auth. ſi quis C. h.*) indicia vero *ſimilia* [21] locum tantum faciunt juramento purgationis, vel *torturæ*, [22] *3. §. 1. C. de quæſt.* e. g. ſi ſoli in loco occulto inter amplexus deprehendantur: &c. *Bocer. de adult. c. 4. n. 13. Carpz. q. 60. n. 40.* Locum etiam quandoque faciunt extraordinariæ pœnæ. *Tum ſequitur pœna,* [23] Jure

K * divino mors *Levit. 20. 10. Deut. 22. v. 5. 22. Ca. q. 52. n. 17.*

* civili * antiquo mors. *30. C. h. §. 4. I. de publ. jud. Carpz. q. 52. n. 30. vid. tamen l. 5. de quæſt. 13. de his, quibus ut indign. 2. §. 3. de his, quæ not. infam. 4. §. 7. de re milit. 8. de divort. 14. ult. de teſtib. 20. §. 6. qui teſt. fac. vid. Vinn. ad §. 4. I. de publ. jud. Lipſ. ad Tacit. IV. annal. Barb. V. 2. D. 32. th. 3. D.*

I * Juſtinianeo, fœmina virgis cæſa in monaſterium detrudebatur, [24] quam ſi intra biennium non receperit maritus, perpetuò ibi tenebant, illique quarta pars bo-

 norum

[illegible] proprietatem conceditur. *N. 134. c. 10. [illegible]* C. h. vid. *Bach. V. 1. D. 32. th. 5. D.*

* Carolina observatur Jus civile: *art. 120.* hodiè pro locorum varietate *pœna varia.* b.
[illegible] *vid. O. P. W. 107. Ca. q. 19. Brunnem. [illegible]*

* *civiliter* [illegible] * *ad dissolutionem* [illegible] matrimonii: *de quo vid. tit. de divort.* hic judex competens *est Ecclesiasticus.* [illegible] *c. 5. X de procurat. c. 3. X de divort.* Ca. q. [illegible] hodie consistorium, * ad amissionem dotis & donationis propter nuptias. *[illegible] C. de repud. N. 117. c. 8. vers. si de adulterio:* hic effectus sequitur non solum ob ipsum adulterium, sed & ob alios *venereos* * actus, e. g. *ob nudas libidines.* [illegible] *N. 117. c. 8. [illegible]* c.
*adeoque sive civiliter* [illegible] agatur de adulterio, sive criminaliter, eo casu, quo mulier in monasterium detruditur *d. d. L.L. (Obs. N. 134. c. 10.)* [illegible] *vid. Ca. q. [illegible] Bart. [illegible] non etiam aliorum* * uxor bona paraphernalia: *Ca. q. [illegible] (Obs. [illegible] §. 5. [illegible] C. de repud. N. 117. c. 8.)*

* *aliorum* [illegible] à marito vel æstimatoria vel extraordinaria d.
D persecutione. *[illegible]* * *PRIVATA* [illegible] quæ est facultas, patri & marito concessa à LL. in adulterio deprehensum certis in casibus *impune occidendi* * *20. pr. 23.*
§ *Nov. 117. c. 15. pr.* marito quidem (*20. pr.* sive paterfamilias sit, sive filiusfamilias: quod in sponso etiam videtur *admittendum,* [illegible] *13. §. 3. §. 1. [illegible] C. [illegible]* h. potest etiam comites secum ducere: *23. §. [illegible] h.*) si de adulterio uxor hac suspectam, post trinas in scriptis, coram tribus testibus factas denunciationes, cum uxore sua deprehendat: *N. 117. c. 15. [illegible]* [illegible] non est mutatum, vid. *L. [illegible] h. [illegible] h.* & Patri, *20. [illegible]* naturali & adoptivo, qui filiam habet in potestate [illegible] tempore occisionis. *[illegible]* non etiam avo. *[illegible]* (*[illegible]* h.) & pater potest hoc filio suo mandare C. Hic requiritur.
O * in genere, ut delinquentes in ipso actu deprehendantur: *[illegible]* h. non sufficit, si nudus cum nuda. N
n.
* in specie, ratione * patris, ut adulteros deprehenderit in sua vel generi domo, *[illegible]* (ratione habitationis. *[illegible] de injur.*) cujuscunque conditionis sit adulter, *[illegible] pr. h.* & debet cum adultero, etiam filiam uno quasi ictu interficere, alias extraordinarie punitur, *[illegible] pr.* nisi prægnans sit, aut vulnerata supervixerit, *[illegible]* O
e. aut effugerit; aut vi compressa fuerit: * mariti ut eos in sua domo deprehendat, *[illegible] pr.* & adulter sit vilis conditionis, *[illegible]* uxorem aut impune non occidit, sed statim dimittat: *[illegible]* eam tamen occidens: ab ordinaria pœna liberatur *d. d. L.L. Obs.* [illegible] *§. 5. de SC. Silan.*

Forma est *ut in D.* hæc interfectio in continenti est facienda *[illegible]* etiam fugientes insequendo. *23. §. [illegible]* Hæc *absque scrupulo conscientiæ* [illegible] non fiunt; cum homo in mortali peccato perimatur, *Obs. Numero* [illegible] *Hoc jus hodie* [illegible] h.
E
Lm.
non ubique est abrogatum. *[illegible]* (*[illegible]*)

e. * 2. *STUPRUM* * accipitur latissimè pro adulterio & Sodomia: *[illegible] de V. S.* late pro masculorum conjunctione *[illegible]* stricte hoc; & est publicum delictum per illicitum concubitum, (hodie adulterium [illegible]) cum virgine vel vidua honestè vivente commissum. *[illegible]* H D
F h. * Violentum est, quia comprimitur vi adhibita fœmina soluta honesta: *[illegible] non etiam [illegible].* [illegible] *d. d. L.L. Ca. [illegible]*) hoc delictum attentatum † D

tentatum extraordinariè punitur auris abſciſſione, fuſtigatione, relegatione: *art. 120.* Conſummatum morte, *l. §. 2 de extraord. crim. Ca. q. 75. n. 13. Harpprecht. ad §. 4. I. de publ. jud. n. 119. art. 119.* licet fœmina metu compulſa tandem *conſenſerit* (41) *Ca. q. 75. n. 16.* Vi autem ſtuprata, macula, aut pœna notatur nulla: *13. §. 7. ff. 20. C.* non tamen coronam virginitatis gerit, nam hoc ſignum eſt virginitatis corporalis. *Ca. q. 75. n. 40. (Obſ. cam.* (42) *publ. tit. 6. c. 32. q. 3. Beſold. ad I. P. W. p. 307. n. 20.)*

* Voluntarium eſt, quod cum volente & parum reluctante committitur. Punitur * Jure civ. in honeſtioribus publicatione dimidiæ partis bonorum, vilioribus fuſtigatione cum relegatione. *§. 4. I. de publ. jud.*

* Jure divino ita, ut ſtuprator ſtupratam & ducat & dotet: *Ex. 22. verſ. 16. Deut. 22. verſ. 28. cap. 1 & 2. x. de adult.*

* Hodie plurimis in locis * ſtuprator (1.) incarceratur, pro arbitrio judicis: (2.) ſtupratam ducat *aut dotet*: (44) (3.) alimenta *præſtet infanti.* (45) *Carpz. q. 69. O. P. W. p. 203.* licet ſtupraverit viduam. *Ca. q. 68. n. 25.* dotis autem quantitas æſtimatur à judice, qui conſiderat conditionem ſtupratæ, & interdum ſtupratorem in majorem ſummam condemnat, quam *qua pater* (46) eam fuiſſet dotaturus: *Cz. q. 68. n. 16. Beſold. ad J. P. W. p. 300.* hæc dos *ſtatim eſt ſolvenda.* (47) *arg. L. un. C. de rapt. virg. §. 1. verſ. ſive maritum volentes accipere. Harpr. d. l. n. 93. Ca. q. 68. n. 32.*

* ſtuprata punitur carcere, *O. P. W. p. 163. Ca. q. 69. n. 37.* Hodie h. non verò eſt extra pœnam, licet perſuaſionibus ad conſenſum ſit inducta. *Diſſ. Bod. 3. concl. 91. n. 122.*

* (3.) *SODOMIA.* (48) *n. 31. C.* punitur Jure * divino, ultimo ſupplicio, *Levit. 18. 22. Exod. 22. 19.* * Juſtinianeo, gladio: *31. C.* * hodierno, igne, *art. 116.* ſi jure Sodom. *cum brutis* (49) ſit commiſſum: *Ca. q. 76. n. 13. O. P. W. p. 271.*

* (4.) *FORNICATIO,* (50) ſive Scortatio (non hac L. ſed arbitrariè punitur,) eſt coitus cum meretrice ſive fœmina vulgari, & vi: commiſſus licet illa pecuniam non accipiat, modo palam ſe proſtituat: *43. pr. §. 3. de R. N. Ca. q. 70. n. 4.* Fuit olim, & eſt hodie quibusdam in locis *extra pœnam,* (51) alibi tamen prima vice carcere punitur, ſecunda verò relegatione. *Ca. q. 70. O. P. W. p. 261 ſeq.*

* (5.) *BIGAMIA* (52) *ſimultanea*, ſi quis conjugatam perſonam adhuc habens, novum matrimonium contraxerit & conſummaverit. Jure civili punitur ut adulterium, *Cz. q. 66. n. 13. &c. Hodie capite,* (53) *art. 121. Ca. q. 66. n. 31.* modo *doloſa* (54) ſit, *art. 121.* & conſummata, corporum ſc. *conjunctione,* (55) *art. 121. ibi.* Vollbringen. *Carpz. 66. n. 80.*

* (6.) *INCESTUS* (56) eſt concubitus illicitus inter conſanguineos & affines in gradu prohibito admiſſus. Aliter punitur inter affines, aliter *inter aſcendentes* (57) aliter inter collaterales. *v. Carpz. q. 72. 73. 74. vid. O. P. W. p. 264.*

* (7.) *LENOCINIUM* (58) eſt, ſi quis quæſtus gratia fœminas alias proſtituit: *Carpz. q. 71. n. 1. Leno punitur* (59) ultimo ſupplicio, ſi filias *aut uxores* (60) proſtituerit: *N. 14. art. 123.* idem eſt in tutoribus & curatoribus, *O. P. W. p. 266. §.* Und ſo Vater. *p. 270. §.* Und ſo ſemand [illegible] / in reliquis pœna eſt arbitraria. *art. 123.*

* (8.) *RAPTUS,* de quo agetur *in ſeq. tit. VI.*

### *Notæ variorum.*

(1) [*Adulterum*] In repræſentando adulterio [illegible] [illegible], quam [illegible] [illegible]. [illegible] [illegible], *Leges Romanæ* [illegible] [illegible] [illegible] *Romani* in [illegible] [illegible] [illegible]

[illegible]

Adulterium quid?

[illegible]

[illegible]

(3) [illegible]

(4) [illegible]

(5) [De futuro] [illegible]

(6, [illegible]

[illegible]

(11 [illegible]

(12 [illegible]

(13) [illegible]

(14 [illegible]

(15 [illegible]

(16) [illegible]

(17) [illegible]

(18) [illegible]

[illegible]

[illegible]

[illegible] Ad Cod. [illegible]

(29) [Ad [illegible]] [illegible] Accurs.

(30) [illegible] Accurs. [illegible] Theod. [illegible]

(31) [illegible] THEODOS. [illegible] Theod.

(32) [illegible] Accurs.

(33) [illegible] Accurs.

(34) [illegible]

[illegible] Theod.

(35) [illegible] Accurs.

(36) [illegible] Accurs. Ad Cod. [illegible]

(37) [illegible] Accurs. [illegible] MATTH. [illegible] Theod.

(38) [illegible] Accurs. [illegible] Ad Cod. [illegible]

(39) [illegible] Theod.

(40) [illegible] Accurs. [illegible]

[illegible]

[illegible]

[illegible]

(44) [illegible]

(45) [illegible]

(46) [illegible]

(47) [illegible]

(48) [illegible]

(49) [illegible]

(50) [illegible]

(51) [illegible]

(52) [illegible]

(53) [illegible]

(54) [illegible]

(55) [illegible]

(56) [illegible]

[illegible] *Pufendorf* [illegible]

[illegible]

# TITULUS VI.

## Ad Leg. Jul. de vi publ.

*Junge l. 9. C. t. 12.*

H V[illegible], quatenus consideratur [illegible] privatum delictum, unde datur restitutio quod metus causa, [illegible] interdictum de vi & vi armata, & est majoris rei impetus, qui repelli non potest, [illegible] est [illegible] ut delictum publicum, & est crimen publicum, quo per [illegible] & securitas publica læditur.

D [illegible] est delictum publicum, quo per [illegible] violentiam securitas publica [illegible] læditur [illegible], quatenus [illegible] vis infertur a publica persona, potestate sua abutente [illegible], quando vis infertur armis, [illegible] de publ. jud. [illegible] proprie, ita dicta (scil. quæ ad [illegible] facta sunt, ut gladius, &c.) vel improprie, ut lapides, ligna, fustes &c. [illegible] ratione objecti, si vis infertur personæ publicæ, vel circa negotium publicum [illegible] loco æstimatur publica, [illegible] in loco publico privilegiato [illegible] castro, [illegible], palatio [illegible] plerumque suspenduntur tabulæ cum inscriptione [illegible] Hering de [illegible] Ahasv. Fritsch. [illegible] Burg-Fried.

E [illegible] capite [illegible] den Haus-Fried [illegible].

[illegible] pro re [illegible] & conditione personarum, carcere, relegatione, fustigatione, manus amputatione, mulcta [illegible] certum tamen pœnam habet [illegible] quæ incidit in crimen [illegible] pacis publicæ [illegible] quando [illegible] malitia, freventlicher [illegible] Werk [illegible] committitur vis atrox, cui resisti non potest [illegible] mit gewaltiger That [illegible] Hand [illegible] Reus itaque crimen [illegible] ipso facto incidit in bannum imperii, ita tamen, ut præcedat sententia declaratoria [illegible] quod deinde retrotrahitur ad tempus delicti. Præterea capite plectitur [illegible]

D [illegible] est delictum publicum [illegible] quod committitur honestam personam sine consensu [illegible] vel contra voluntatem consanguineorum, curatorum, &c. L. un. C. de rapt. virg. [illegible] tamen absque persuasione, &c. sua sponte consentiente, ordinaria pœna [illegible] de publ. jud. [illegible] raptam rapuit, etiam adultera tenetur [illegible] rapuit, extraordinarie punitur [illegible] L. un. [illegible] libidinis gratia, (alias extraordinarie punitur [illegible]) abducendo [illegible] L. un. pr. C. de rapt. virg. [illegible] de publ. jud. [illegible] de loco in locum, non sufficit in eadem domo aut alio loco, fœminam libidinis gratia in commodiorem locum abducere [illegible] raptor raptam non cognoverit, [illegible] de publ. jud. L. un. C. de rapt. virg. [illegible] Carpz. [illegible] Berlich. [illegible] de rapt. virg. [illegible] de vi publ. [illegible]

Pœna

[illegible]

## Notæ variorum.

[illegible]

[illegible], de [illegible] *p. 4. C. [illegible] 12. & Carpz. ad [illegible] C. l. 2. 3. [illegible]*

(4.) [*[illegible] jure [illegible]*] [illegible] vi, tam publicæ, quam privatæ, [illegible] est, ut [illegible], [illegible], ex lege [illegible] pœnam [illegible], in qua [illegible], non ad leges *Romanas* sed *Germanicas* esse [illegible], ipse [illegible] [illegible], quo loco id etiam [illegible], quod [illegible] in [illegible] [illegible], plus [illegible], quam effectus habere solent, [illegible] quod [illegible] [illegible]. *[illegible]*.

(5) [*Pro [illegible]*] [illegible], pœna semper [illegible] secundum qualitatem [illegible]. *Berl.*

(6) [*Dolosi*] Dolus enim hic [illegible], [illegible] illicitas [illegible] ipso facto [illegible] esse [illegible] dolo [illegible]. *Carpz. [illegible] quæst. 35. n. 12. Berl.*

(7) [*Coadunatis hominibus*] Quot verò personæ ad [illegible] pacis publicæ requirantur, arbitrio judicis relinquitur, [illegible] duo sufficiunt, *Carpz. d. l. n. 19. Berl.* [illegible] [illegible] [illegible]. [illegible] autem bonum [illegible] [illegible], [illegible] [illegible], pœna [illegible] [illegible], *[illegible] Const. Crim. art. 128. & 129.* [illegible] [illegible]. Ad [illegible] [illegible] pacis publicæ [illegible] requiritur [illegible] (1.) ut [illegible] [illegible], & (2.) *coadunatis hominibus*, [illegible] speciem belli [illegible] privata pro se ferat. Numerus personarum tamen non est determinatus, sed quemadmodum in [illegible] belli exercitus [illegible] major est, [illegible] minor: [illegible] hic quoque [illegible] plures, [illegible] [illegible] sufficit [illegible], *[illegible] Carpz. [illegible] 53. [illegible] 2.*

(8) [*Rapina*] Hoc [illegible] delictum [illegible] est, [illegible] [illegible] prohibetur, [illegible], quod [illegible] [illegible], leges [illegible] [illegible] [illegible]. [illegible] apud *Romanos*, [illegible] [illegible] [illegible] [illegible], quod [illegible] [illegible] [illegible] est *p. 4. [illegible] 3. [illegible] THEODOR. [illegible] 6 [illegible] 3 n. 12.* Raptor [illegible], quod [illegible], [illegible] & pœnam [illegible] debet [illegible]. & [illegible] rigor *juris Romani* [illegible] non [illegible]; [illegible] in [illegible] [illegible] [illegible]: *l. [illegible] §. 1. [illegible]*, [illegible] est [illegible] [illegible] [illegible]. *[illegible]*.

(9) [*[illegible] non [illegible]*] [illegible] [illegible] [illegible] [illegible] [illegible]. *Berl.*

(10) [*[illegible]*] Qua [illegible], & [illegible] [illegible] [illegible] [illegible] [illegible]. *Berl.*

(11) [*[illegible] [illegible]*] [illegible] [illegible] in [illegible], [illegible] [illegible] [illegible] pœnam, [illegible] [illegible] [illegible] [illegible]. [illegible], si [illegible] [illegible] [illegible] [illegible] [illegible]. *Berl.*

(12) [*[illegible]*] [illegible] hodie [illegible], & [illegible] [illegible]. [illegible] [illegible], quod in *Belgio* [illegible] *anno* 1664. [illegible] [illegible] *[illegible] in Tr. de jur. [illegible] l. 2. c. 23. n. 38. Berl.*

(13) [*[illegible] non [illegible]*] [illegible] de [illegible] [illegible], quod [illegible] [illegible], & [illegible] [illegible] [illegible] [illegible], *[illegible] [illegible] [illegible] 312. c. 3. & 4. Berl.*

# TITULUS VII.

## Ad L. Jul. de vi privata.

*Junge l. 9. C. tit. 12.*

D **V**IS *PRIVATA* est, quæ committitur leviori violentia, ita, ut quies a.
publ. non tam graviter lædatur: *Exempla sunt in* (1) *L. 1. 2. 3. ff. & C. h.*
ubi etiam quædam sunt, quæ ad vim publicam pertinent, scil. quo
E latior sit accusandi facultas. Pœna J. civ. est publicatio tertiæ partis bonorum: *§. 8.*
SS *I. de publ. jud.* hodiè est arbitraria: *Cz. 4. [illegible] [illegible] 7. &c.* Concurrunt hic pro ratione circumstantiarum actio vi bon. rapt. &c. (*Vid. [illegible] tit. in pr.*) quod met. causa, interdictum unde vi.

### Notæ variorum.

(1) [*Exempla sunt*] Committitur, quando (1.) de agri [illegible] possessione quis [illegible] sine armis *leg. 5. ff. h. leg. 5. C. ad L. Jul. de vi publ. & priv.* (2.) [illegible] hominibus vis infertur, ut [illegible] verberetur, pulsetur, cum homo [illegible] non est *leg. 2. ff. junge leg. 10. §. 1. ff. ad L. Jul. de vi publ.* (3.) Creditor sine [illegible] judicis [illegible] [illegible] [illegible] *l. fin. ff. [illegible]*.

TIT.

# *TITULUS IIX.*

# Ad L. Corneliam de ſicariis & veneficiis.

*Junge lib. 9. C. tit. 16. 18. lib. 5. t. 12. X. de homicidio voluntario vel caſuali t. 21. X. de ſortilegis.*

A B C HOMICIDIUM eſt actus mortiferus in corpus hominis * DOLOSUM eſt, quod à ſciente & volente dolo malo committitur, eſtque * (1.) IMMEDIATUM * SIMPLEX, quod nomen generis retinet; Cauſa efficiens eſt malitioſa occidentis voluntas, [illegible] (a) D C O

indirecta, e. g. ſi quis inſtrumento ad homicidium apto læderet aliquem animo non occidendi, * ſed vulnerandi, [illegible] modò mors ex vulnere, non verò per accidens ſuperveniens (b) ſecuta fuerit; [illegible] ſiquidem hujuſmodi inſtrumento etiam præſumitur animus occidendi: [illegible] quæ autem talia ſint, de eo cognoſcit judex. [illegible] Occidunt omnes, qui rationis uſu non deſtituuntur: [illegible] Puberes tamen & Pubertati proximi, doli capaces, [illegible] (c) [illegible] Occiditur quicunque homo cujuſcunque conditionis aut ætatis, [illegible] Forma eſt ille doloſus actus quem mors ſequitur per ſe, non vero per accidens [illegible] hanc ſic judicandi [illegible] & aliquando licet mors ſit ſecuta, reus tantum vulnere tenetur, [illegible] Punitur Jure C. in vilioribus, ultimo ſupplicio, in honeſtioribus deportatione: [illegible] de jure Codicis, naturali, & hodierno, indifferenter morte (f) [illegible] hanc pœnam tamen aggravant circumſtantiæ, [illegible] quas judex æſtimat, [illegible] (g) [illegible] (h) [illegible] (i) [illegible] Modò homicidium ſit conſummatum: [illegible] (k) morte puniebatur, [illegible] ſi plures unum interfecerint, b.

D * & omnes facta conſpiratione conſenſerint, tum omnes tenentur ordinaria pœna, ſive omnes, (l) ſive plures percuſſerint, ſive de auctore conſtet, ſive non [illegible]

d. * in rixa ſubito contingente, & * de uno, qui vulnus lethale intulerit, * conſtat liquidò de ſolo (m) ordinaria pœna tenetur: [illegible] ad

E L. Aquil. * non conſtet, ſi quidem ſuſpiciones ſufficientes * adſuerint contra aliquem,

F ille torquetur: * non adfuerint contra aliquem, tum omnes in rixa armis præſentes extraordinariè puniuntur (n) [illegible]

f. G Auch ſo niert in einem Aufruhr / [illegible] * omnes eum vulneraverint * lethaliter, de quibus etiam conſtat, ſed quisnam primum vulneraverit, dubitatur,

h. e. H tum omnes gladio puniuntur. [illegible] Wann aber der Entleibte. [illegible]

h. * ita ut ſingulorum vulnera non fuerint lethalia, ſed ſimul ſumpta, tum omnes extra ordinem à judice puniuntur, [illegible] Und man möchte wiſſen. [illegible] neque hic auctor certo eſt ultimo ſupplicio (o) afficiendus, [illegible] * QUALIFI-

c. CATUM

*CASUM*, quod propter concurrentes circumſtantias aliud nomen recipit, ut eſt

*(1.) Parricidium, *de quo vid. ſeqq. tit.*

*(2.) Veneficium, quod hic eſt homicidium malo veneno, (*l. 3. §. 2. h. t. L. 236. de V. S. ibi Alberic. Gentil.*) commiſſum: Hoc crimen eſt atrociſſimum: *l. C. de maleſ. & mathemat. Ariſt. 2. Ethic. 3. §. 1. de pæn. Valer. Max lib. 2. c. 5. Flor. lib. 2. c. 12. Grot. de J. B. P. l. 3. c. 4. n. 15. 16. Alber. Gentil. de bello lib. 2. c. 6.* Pœna Jur. civ. eſt gladius, *1. pr. §. 1. L. 3. pr. h. §. 5. I. de publ. Jud.* licet quis tantum vendiderit venenum nocendi cauſa, *l. §. 1. L. 3. pr. vid. art. 37 Cz. q. 20. n. 5. 7. 8.* etiam delicto non ſecuto *Gentil. ad L. 1. C. de maleſ. vid. 35. §. 2. de contrah. emt. 4. §. 1. famil. erciſ.* Hodiè delictum conſummatum punitur in maſculis rota, in fœminis aquæ ſubmerſione: *art. 130.* modò conſtet venenum noxium eſſe *propinatum*, [illegible] *animo occidendi*, [illegible] *3. §. 1. diſt. 38.* [illegible] *§. 5 de pæn.* indeque mortem immediatè ſecutam: *art. 130.* de quo cognoſcit judex & medicus: *Gentil. ad L. [illegible] de maleſ. & mathem.* alias tantum extra ordinem punitur, *art. 178.*

*(3.) Aſſaſſinium ſive aſſaſſinatus homicidium qualificatum, quod mercede *conductus* [illegible] committit: Pœna eſt rota: *Cz. 1. q. 19. n. 10.* mandans verò ſive aſſaſſinator ex majori protervi occidit, *Cz. 1. q. 19. n. 15.*

*(4.) Latrocinium eſt homicidium ſpolii & lucri gratia commiſſum, *Cz. q. 22. n. 1.* e. g. ſi quis interficiat maritum, ut ejus uxorem ducat. *Carpz. q. 22. n. 13.* Licet ſpoliatio facto impedita fuerit. Pœna ordinaria eſt rota, propter circumſtantias uſto candentibus forcipibus, non tamen ultra ſex vices uritur, *Cz. q. 25. n. 12.* Si verò pervenerit tantum ad actum * *remotum*, [illegible] punitur arbitrariè, *art. 178. verſ.* Aber in einem Fall / [illegible] * proximum, e. g. ſi lethaliter vulneratus ſpolietur, tum *[illegible] poſt* [illegible] ad pœnam gladii, *d. L. [illegible] art. 126.*

*(5.) mediatum, quod mediante alia perſona fit, iſque ſi certum pretium * acceſſerit, dicitur aſſaſſinium, *de quo ſupra.* * non acceſſerit, dicitur *VERBALE*, quod eſt homicidium doloſo cædis mandato commiſſum. idem eſt, ſi quis mandet gladio aliquem *vulnerari*, [illegible] expreſsè autem prohibeat occidi, *Clarus lib. 5. recept. ſent. §. f. q. 10. n. 5. Menoch. de arbitr. jud. quæſt. lib. 2. cent. 4. caſ. 352. Cz. q. 4.* (*Diſſ. Harpr. ad §. 5. I. de P. I. n. 80. Fr. Ex. f. q. 8. propter 10. C. de procur.*) modo mandatarius alias non occidiſſet, aut ejus occidendi animum mandans ignoraverit: alias extraordinariè punitur. *art. 148. Cz. q. 4. n. 20.* *Nudum conſilium* [illegible] pœnæ extraordinariæ tantum locum facit, *Cz. q. 4. n. 9. L. [illegible] §. 7. mandat. l. §. 14. depoſ. [illegible] de his. qui not. infam.* licet illud mors *fuerit ſecuta.* [illegible] *Theodor. coll. crim. D. 7. th. 6. E.* (*Diſſ. Harp. ad §. 5. de publ. jud. n. 97. L. 15. h.*) Pœna eſt, ſi mors fuerit ſecuta, ultimum ſupplicium mandatarii, *15. §. 11. mandat. 5. C. de accuſ.* & mandantis *15. §. 1. h. 5. C. de accuſ. 11. §. 3. de injur. 7. §. 5. de Juriſd. 1. §. 1. de eo, per quem fact. 1. §. 12. de vi & vi arm.* ſi non fuerit ſecuta, arbitraria.

*NON DOLOSUM, hoc propriè huc non pertinet: *7. h.* & eſt vel * culpoſum, quod præter voluntatem culpa committitur (1.) rei illicitæ operam dando, ex qua mors per accidens ſequitur e. g. lapidem projiciendo in locum publicum, &c. (2.) in re licita debitam diligentiam non *adhibendo* [illegible] *31. 45. §. 9. ad L. Aquil. art. 146.* Punitur arbitrariè, pro quantitate culpæ fuſtigatione, relegatione, *4. C. h. art. 146. Cz. q. 27. n. 10. 25.* * non culpoſum * caſuale, quod caſum improviſum ſine dolo & culpa ſequitur, *art. 146. L. 4. C. de pign. [illegible] Hoc non* puni-

punitur, [illegible] *C. de pign. act.* C. 2. *q.* 27. *n.* 31. * Neceſſarium, quod D
in ſui defenſionem committitur: hoc non punitur, modò *adſint moderamen* [illegible] in-
culpatæ tutelæ. *3. de J. & J.* L. 4. *5. pr.* 45. §. 4. *ad L. Aquil.* 2. C. *unde vi.* 3. C. *quando*
*lic. unicuique* [illegible] quod met. cauſa. L. 1. §. *vim vi repellere*, 27. *de vi & vi armat.*
*Exod.* 22. *verſ.* 13. *Obrecht. de neceſſaria defenſ. Kreuzberg. ad ar.* C. 2. *q.* 28. *n.* 3. cujus re-
quiſita ſunt, ut injuſta offenſio [illegible] propulſione incontinenti repellatur:
[illegible] L. Si occidens *amor* [illegible] tum ordinaria pœna locum habet. *Carpz.*
*q.* 29. *num.* 41.

*VENEFICIUM* [illegible] eſt publicum delictum, quod committitur magicas artes (2.)
exercendo, & pacto cum diabolo inito. Ejuſmodi delictum dari negat. *Wier. in tr.* D
*de præſtig. Dæmon.* [illegible] C. 2. *q.* [illegible]
*n.* 3. *Bodin. Gerhard. Delrio in ſingul. tr. hic.* Punitur Jur. civ. gladio, *5. C. de maleſ.* §. 5. E
N *I. de publ. Jud.* igne L. 3. C. *de maleſ.* Hodiè, ſi pactum cum Diabolo inierint * ex-
preſſum, & damnum dederint, concremantur: *art.* 109. ſi non dederint, arbitrariè
puniuntur, [illegible] *Lev.* 20. *verſ.* 6. *Exod.* 22. *v.* 18. *Deut.* 18. *v.* 10. L. 3. 5.
C. *de maleſ. Zanger. ad art.* 109. *Theodor. D.* 7. [illegible] *Carpz. quæſt.* 49. *Beſold. ad I. P.*
*W.* p. [illegible] (*Diſſ. Thomaſ. in ſing. tr. de ſagarum*
n. *inquiſitione. Harpr. ad* §. 5. *I. de publ. jud. n.* 306.) * ta-
citum, [illegible] (ſi ſc. ſine expreſſa conventione magicis artibus tantùm utuntur,) *ex-*
*traordinariè puniuntur* [illegible] fuſtigatione, relegatione, &c. C 2. *q.* 50. carcere etiam ſi
quis tantum ex imprudentia illis uſus ſit: *O. P. W. p.* 104. Etiam ſcientia harum ar-
tium eſt prohibita *4. Cod. de maleſ.* 4. §. 1. *de hered. inſtit.* [illegible] ad L. 2.
C. *de maleſ.*

O *INCENDIUM* * *doloſum*: [illegible] 10. h. §. 5. *I. de publ. Jud.* eſt delictum publicum, (3.)
P quo dolo malo factum eſt incendium: Pœna * Jure civili erat incendii in urbe, D
concrematio vincti & verberati, *9. de incend. ruin. naufr.* gladius: L. 10. h. 28. §. 12. *de* E
*pœn.* extra urbem deportatio: *5.* §. 1. *de incend. Paul. lib.* 5 *ſent. c.* 20.
p. * Hodiè incendiarii indifferenter
concremantur, *art.* 125. C. 2. *q.* 38. *n.* 23. *Zanger. ad art.* 125. *Beſold. p.* 2. *c.* 74. *n.* 2. *Coler.*
p. 1. *dec.* [illegible] ſive ſit maſculus, ſive fœmina, *Carpz. q.* 38. *n.* 19. no-
bilis aut plebejus, C 2. *q.* 38. *n.* 23. in vel extra civitatem, C 2. *q.* 38. *n.* 30. magnum
aut parvum ſit incendium: *Berl. de incend. n.* 71. *Carpz. q.* 38. *n.* 42. propter *art.* 125.
Si tamen materia non fuerit inflammata, & *ignis* [illegible] tum extraordinariè
punitur, C 2. *q.* 38. *n.* 43. gladio, *Beſold. p.* 2. *conſ.* 74.
o. * *culpoſum*, [illegible] datum culpa * lata, obligat auctorem ad omne
Q damnum, actione incendiorum edictum, quæ eſt ipſa actio L. Aquiliæ, *de qua ſupra*,
& extraordinariam pœnam, & quidem criminalem, ut fuſtigationem, relegatio-
nem, carceris, pecuniariam: *3.* §. 1. *de offic. Præfect. vigil. Berl.* [illegible] C 2. *q.* 38.
*n.* 45. * culpa levi, damnum hoc eſt re-
ſarciendum, *Berl. d. l. n.* 97. non etiam locum habet extraordinaria pœna *9. 11. de*
q. *incend. naufr. ruin.* 28. § 12. *de pœn.* * leviſſima obligat auctorem ad
indemnitatem, *ſi ex natura negotii* [illegible] præſtatur hæc culpa, *aliàs non*, [illegible] *Diſſ. Berl.*
*d. l. n.* [illegible] ad L. *Aquil.*

## Notæ variorum.

(1) [illegible]

[illegible]

(2) [illegible]

(3) [illegible]

(4) [illegible]

(5) [illegible]

(6) [illegible]

(7) [illegible]

(8) [illegible]

(9) [illegible]

(10) [illegible]

(11) [illegible]

(12) [illegible]

(13) [illegible]

(14) [illegible]

(15) [illegible]

[illegible]

(24) [illegible]

(16) [illegible]

(17) [illegible]

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(29) [illegible]

(30) [illegible]

(31) [illegible]

(32) [illegible]

(33) [illegible]

(34) [illegible]

(35) [illegible]

(36) [illegible]

(37) [illegible]

(38) [illegible]

(39) [illegible]

ad ejus naturam indefinitè provocatur, v. gr. ſi vicinus culpa leviſſima in ædibus ſuis excitet incendium, quod ejus etiam rem abſumat, quale quæſo negotium inter nos interceſſit? Igitur expreſſiſſis hæc emendari debent; ſi *nullum negotium præceſſerit* tum culpa etiam leviſſima erit præſtanda, quo debet referri ſententia diſſentientium, qui haſtenus rectè ſentiunt, ſi verò *contractus præceſſerit*, tum ſententia *Autoris* locum habet, & nihil intererit, ſive laſus actione ex contractu, ſi *L. Aquilia* agat, nam nomen actionis effectum non mutat, & omni caſu ei opponi poteſt, quod juxta naturam negotii aliaque circumſtantias, in certam culpam conſenſerit. *Titius,*

(40) [*Alias non*] Sic *conductorem* ex tali incendio non teneri dicunt, quia vi contractus tantum tenetur ad culpam *levem*; Verum ſi non agatur ex contractu, ſed directè ex *L. Aquilia* non video, quare ob leviſſimam culpam liberandus ſit, nam contractus non mutat naturam delicti. Interim tamen *Autoris* ſententia communior eſt; pro qua hæc ratio addita poteſt, quod dominus rem ſuam alteri locando remiſiſſe videatur majoris culpæ præſtationem, quam qualis ex natura contractus præſtanda, vid. *Tr. d. A. F. J. delt. 1. membr.* 10. § 28. *Brunn.*

*Conductor vi contractus non tenetur ad incendii levi culpa ortum.*

*Contractus non mutat naturam delicti.*

(41) [*Propter* 44.] Ad Obſ. *L.* 44. *ad L. Aquil.* ibi: *Et leviſſima culpa venit.* Id Verum, niſi res exactiſſimam diligentiam non requirat *arg. l.* 32. *Depoſiti §. ult. ff. de tutel. l.* 151. *de R. J. l.* 24. *§. ult. l.* 26. *de damn. infect. Berger.*

# TITULUS IX.
## De L. Pompeja de parricidiis.
### *Jung. L. 9. C. tit. 17.*

*Parricidium* [1] eſt delictum publicum, quod committitur conjunctas perſonas doloſè occidendo. Proprium eſt cædes parentum; improprium reliquarum perſonarum conjunctarum. Fit voluntate doloſa (hinc ceſſat in *patre hoſte,* [2] *35. de religioſ.* occidente furioſo, *40. de R. I. 9. §. f. h.* matre filium in ſomno ſupprimente: hæc tamen extra ordinem punitur: *c. 3. x. his, qui de fil. occid. Cz. p. 4. c. 3. d. 14. & q. 15. n. 33.* culpoſo: *Cz. q. 15. n. 22. & p. 4. c. 3. d. 13.*) occidendi (hinc ceſſat in corrigente, *Cz. q. 4. c. 3. d. 12. & q. 15. n. 9.*) perſonam conjunctam, *art. 1. h.* (hinc ceſſat in ignorante patrem, &c.) D f C

Perſonæ conjunctæ * (1.) ſanguine, ut aſcendentes, *1. h. L. un. C. de his, qui parent. vel lib.* etiam illegitimi, [3] *4. de in jus voc.* deſcendentes, *1. in f. ff. L. un. C.* collaterales usque ad quartum gradum comput. J. Civ. *1. h. n. 3.* S

A

*(2.) affinitate, aſcendentes, & deſcendentes, *1. 3.* collaterales, *Cz. 4. c. 3. d. 11.* etiam ſponſus, *4. h.* ratione affinitatis.

a.

* (3.) conjugio vel ſponſalibus.

a.

* (4.) inæſtimabili beneficio, ut patronus & libertus, *1. h.*

a.

B C D

Hoc delictum * commiſſum * in linea * recta ita punitur: reus virgis *ſanguineis* [4] cæſus, cum cane, gallo gallinaceo, vipera & ſimia culeo inſutus, *in mare projicitur.* [5] *Vid. 9. pr. h. 1. h. L. un. C. de his qui parent. §. 6. I. de publ. jud. Cz. q. 5. n. 8. 9.* quæ pœna *adhuc hodiè obſervatur,* [6] *Berl. 4. concl. 6. n. 6. Coler. deciſ. 157. Cz. q. 5. n. 15. Ord. Crim. art. 131. Diſſ. Harpr. ad §. 6. I. de publ. jud. n. 30.* licet illegitimi fuerint parentes; *Cz. 4. c. 3. d. 2.* & hæc etiam tenet extraneum hujus criminis *participem,* [7] *§. 6. I. de publ. jud. L. 2. h.* De abortu, *vid. tit. de extraord. crim.* E

* collaterali punitur gladio, *9. 1. h.* Reus tamen *ferro candenti* [8] aduritur, vel trahæ illigatus ad ſupplicium rapitur, & cadaver rotæ imponitur, *art. 137. Carpz. q. 9. ferè in f. & 4. c. 3. d. 4. 5.* d.

* inter affines aſcendentes & collaterales, *9. §. 5.* e.

 puni-

punitur morte: *l. a.* §. *i.* L. *au.* C. *h. t.* *Carpz.* *a. c.* *j.* *d.* *a.* *j.* & idem, quod inter colluctantes. * inter *conjuges* [9] idem, quod inter collateralis: *art. 137.* *inſ. Carpz.* *q. 12.* *Hahn. h.* c.

* inter patronum & libertum idem eſt: c.

* attentatum tantum, jure civ. pro conſummato habebatur: b.

*l. in f. h.* hodiè ſi pervenit ad actum * proximum, & perſona læſa damnum irreparabile * accepit, punitur gladio, E

* non accepit, punitur fuſtigatione cum perpetua relegatione:

* remotum extraordinariè punitur. Hæc accuſatio *eſt perpetua*, [10] *ſ. h.* pœna mitigatur, ſi delictum commiſſum ex ebrietate, melancholia, ira, &c. [11] *Carpz. q. 13.* d. e.

## Notæ variorum.

Parricidium eſt vel proprium vel improprium. (1) [*Parricidium*] Hoc in generali conceptu, [illegible] ſeu ſingulorum aſſſectorum [illegible] proprium [illegible] *Lauterbach* [illegible] *Brunn.* [illegible]

Pœnam habere [illegible] (2) [*Patre bello*] [illegible]

(3) [*Etiam aliquando*] Quæ [illegible] *Brunnem.* [illegible] *Berg.*

(4) [*Aequiparato*] [illegible] *Berg.*

(5) [*In mare projiciuntur*] [illegible] *Berg.*

Pœnæ parricidarum eſt culeus. (6) [*Adhuc hodie obſervatur*] [illegible] *Berg.*

(7) [*Parricidium*] [illegible] *Berg.*

(8) [*Ferro vindicatur*] [illegible] *Brunnem.* *Proc.* [illegible] *Berg.*

(9) [*Conjuges*] [illegible] *Berg.*

[illegible]

(10) [*Eſt*

(10) [illegible] *perſonam*] [illegible] [illegible] [illegible] Theodor. [illegible] [illegible], [illegible] [illegible] in conſilio [illegible] [illegible] [illegible] [illegible] *de falſ.* [illegible]

(11) [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]

# TITVLVS X.

## De L. Corn. de falſis & Senatus conſulto Liboniano.

*Junge l. 9. C t. 22.*

Falſum hic eſt crimen publicum, quo in alterius præjudicium, [illegible] *de pœn. Dn. Gramm. Diſſ. de crim. falſ.* [illegible] veritas improbè immutatur, *N.* [illegible] [illegible] L. [illegible] quodque ſpeciali lege tanquam falſum notatur & coercetur. Eſt D
* verum falſum, quod L. Corn. hic notatur, ut quod committitur circa te-
A ſtamenta & nummos [illegible] !
* quaſi falſum, quod non hac L. ſed aliis conſtitutionibus & SCtis nota-
a tur: e. g. ſi quis rationes, inſtrumenta falſaverit, [illegible] *de Bann. ad. q. D.* [illegible] Cauſa efficiens eſt [illegible] [illegible] *Weſenb.* [illegible] [illegible] *Tabor.* [illegible] *Crim. D de falſis.* [illegible] *C.* [illegible] & dolus malus, [illegible] C. h. qui C manifeſtiſſime probandus [illegible] *C. de dol. mal.* [illegible] *de probat.* hinc error excuſat, [illegible] h. Committitur in * perſonam (1) Partum falſum ſupponendo, [illegible]
D C. cujus pœna hodie eſt *arbitraria* [illegible] *C.* [illegible] (2) Alienam perſonam ſub- O ſtituendo [illegible] *Thdaſ* (3) Nomen mutando, [illegible] h. [illegible] do-lo malo fiat, in *præjudicium Tertii* [illegible] (4) Si quis ſe ſimulet Baronem, Nobilem, Doctorem, [illegible] C. *ad L. Jul.* modò etiam ejuſmodi actum aliquem fecerit, [illegible] *Theodor. D* [illegible] *Ludov.* [illegible] *ad W.* [illegible] alias tantum extraordinariè puniuntur: ut ſi mendicantes vulnera, &c. ſimulent [illegible] (5) ſi quis infantem ſuum bis [illegible] cauſa [illegible] baptizari curet. [illegible]
* in re * ultimis voluntatibus, ut in [illegible]
b legatum propria manu ſibi adſcribendo, [illegible] licet teſtator hoc juſſerit: [illegible]
O C. *de his, qui ſibi adſcrib. in Teſt.* alio modo teſtamentum vitiando.
* negotiis inter vivos * extra judicialibus e. g. rationes fal-
c ſando [illegible] contractum mutando, [illegible] *art.* [illegible] merces corrumpendo,
D pondera, menſuraſque falſando. *art.* [illegible] monetam adulterando, [illegible] raden-
d do, alterius literas [illegible] [illegible] * Judicialibus, ſi judex neglexerit principia conſtitutionem, [illegible] vel pecunia ſe corrumpi patiatur, [illegible] ſi partes judicem corruperint, [illegible] teſtes pecuniam acceperint ad falſum teſtimonium dolo malo dicendum, [illegible] *art.* [illegible] etiam ad verum dicendum; *art.* [illegible] *Theodor. D.* [illegible] *Matth.* [illegible]

Pœna hujus delicti eſt in liberis hominibus deportatio, & confiſcatio omni- !!
um bonorum, [illegible] quod [illegible] *N.* [illegible] in ſervis ultimum ſupplicium.
Hodie pœna eſt arbitraria [illegible] *art.* [illegible] quæ interdum manus amputatio, In
*N.* [illegible] ultimum ſupplicium: [illegible] C h. juncta *Nov.* [illegible] quædam tamen ſpecies habent certam pœnam: ut ſi quis falſum teſtimonium dixerit, ex quo reus morte condemnatus, [illegible] *ad L. Corn. de Sicar. art.* [illegible] tum eſt pœna ta-



lionis.

bonis. l. art. Si moneta cuditur, (9) quoad * materiam, pœna eſt ignis, [illegible] aliquis [illegible] expenderis. (10) l. 2. C. de falſ. monet. art. 111.

* formam, privata auctoritate eam fabricando, reus fit læſæ majeſtatis, & arbitrariè punitur: art. 111. Cl. q. 49. n. 10. Alterius principis (11) ſignum monetæ imponendo, extraordinariè punitur, art. 111. Cl. q. 49. num. 27. Pondus radendo, (12) vel alio modo mutilando, arbitrariè punitur, etiam quandoque morte: Cl. q. 49. n. 31. Grandiorem reſolvendo (13) in fornace, ut minorem inde cudat punitur arbitrariè, art. 111. & ſecundum R. I. anno 1530. §. [illegible] [illegible] igne [illegible] Cl. q. 49. in f. Interdum etiam de hoc crimine agitur civiliter, ad pœnam dupli. [illegible] §. 1. [illegible] Interdum datur inde doli exceptio, [illegible] §. 1. de dol. mal. exc. vel replicatio. ſi quis hoc crimine deceptus, pacto delictum remiſit, 19. C. de tranſact. vel conceditur reſtitutio in integrum. L. [illegible] de re jud.

## Notæ variorum.

[illegible] Tonne.

(1) [L.L. Monetæ] [illegible]

(2) [Reipublicæ] [illegible]

(3) [Prætermittenti ...] [illegible]

(4) [Æreum] [illegible]

(5) [Juſtinus] [illegible]

(6) [Cudendo] [illegible]

(7) [Reſolvendo] [illegible]

(8) [Monetam per M.] [illegible]

(9) [Si moneta cuditur] [illegible]

[illegible] , tum hoc debet intelligi de caſu, quo depravatio monetæ non acceſſit, nam per hanc, crimen [illegible] manifeſtum eſt. *Titius.*

Falſum nummum expendens. (10) [*Tantum expenderit*] Hæc reſtringunt, modo [illegible] cum colore falſæ monetæ, & ſic magis peccat, qui expendit, quam qui cudit monetam falſam. *Berl.*

(11) [*Alterius Principis*] [illegible] Princeps Imperii ſit, non puto à pœna capitis immunem hoc eſſe delinquentem, quia damnum ſæpe redundat in Imperium. *Berl.*

Monetam radens. (12) [*Radendo*] [illegible] hoc pondus ſit exceſſivum, læditur enim in Principe, qui ſua reputatione cauſa monetam talem cudit. *Berl.*

[illegible] (13) [*Reſolvendo*] Hoc pertinet in ſpecie [illegible] [illegible] *vide Bo de Rhoer in Inſt. Jur. publ. lib. 2. c. 16. §. 15.* *Berl.* Delictum hoc non tam æſtimatur ex eo, quod minor moneta ex grandiore cudatur, quam potius ex depravatione, quæ hoc caſu occurrere ſolet, vide *Claſen ad Ord. Crimin. d. art.* 111 *num. 5.* Præterea id quoque delicti quantitatem auget, quod hoc tamen, vel etiam ſimplex moneta in aliam uſum reſolvitur, [illegible] [illegible] monetam, velut [illegible] quæ [illegible] Hoc ad crimen *leſæ Majeſtatis* quodammodo hoc factum accedit. quam ob [illegible] pœna [illegible] *d. B. de An* 1559. §. 170. ſtatuta videtur, quamvis [illegible] *Carpzovius* [illegible] ille rigor non adeo obſervetur. *Titius.*

# TITULUS XI.

# De L. Jul. repetundarum.

*Junge l. 9. C. 1. 27.*

Hic agitur (1) * in genere de delicto publico, quod committunt magiſtratus & alii in officio publico conſtituti, turpiter aliquid gerendo, contra L. Juliæ *repetundarum* (2) prohibitionem; ut in L. *10. §. f. de offic. proconſul. 9. de vacat. & excuſ. mun. 7. §. 2. 6. §. 2. h.*

in ſpecie de crimine publico, quod *committunt magiſtratus*, (3) & alii in officio vel munere publico conſtituti, dona & munera accipiendo, quo magis vel minus officium faciant. *1. pr. §. 1. L. 7. §. 2. h. Prohibentur accipere Tutores*, (4) adminiſtratores, Syndici, magiſtratus omnes. *1. h.* per ſe & per alios, uxorem liberos: &c. *f. C. h. propter 6. §. 3. in f. de off. proconſ. 18. de offic. præſid. 7. § 1. ff. f. C. h.* deinde hæc Lex etiam extenſa eſt ad perſonas dantes, in *L. f. C. h.* niſi *donetur* (5) *magiſtratui urbano*, (6) qui extra officii rationem munera accipere poteſt, quotannis uſque *ad aureos 100.* (7) *L. 6. §. 2. h.*

Munera, non etiam xenia, h. e. eſculenta & potulenta, quæ paucis diebus *poſſunt abſumi*. (8) *18. de offic. præſid.* rectius tamen faciunt, qui nec hoc *accipiunt*. (9) *Cz. q. 85. n. 61.* Debet aliquid datum eſſe. *1. ff. f. C. h.* (naturaliter vel civiliter titulo donationis, locationis, venditionis, &c. *2. §. 1.*) vel promiſſum, *1. & ſeq. Auth. C. de pœn. Jud. qui male Jud.* ut aliquis &c. magis vel minus officium faciat. *3. 4. h. v. 2 §. 2. de condict. ob turp. cauſam* Nec magiſtratus poſt officium remunerationem accipere poteſt: *L. f. C. h. Matth. n. 1. Pœna hic eſt* (10) pecuniaria, ſc. quadrupli, *1. f. in f. C.* (hujus dimidium actori dabitur, ſi ipſi à judice extortum eſt, quod dedit: *f. C. h. 3. C. de aſſeſſor.* aliàs totum fiſco cedit; ſi ſponte dedit: *f. C. h.*) quæ etiam ab heredibus *intra annum peti* (11) poteſt: *2. h. 20. de accuſ. f. ff. 2. C. ad L. Jul. pecul.* vel extraordinaria, *pro ratione circumſtantiarum*, (12) exilium, *mors*, (13) &c. *7. § f. h. vid. Matth. c. 2. Maſtertz de reform. Advoc. & Jud. offic. p. 3. t. 24. &c.* Si judex accepta pecunia male judicaverit, ſententia eſt ipſo jure nulla. *7. C. quando provoc. non eſt nec.* ipſe fit infamis, & pœnæ ad ſolidum litis æſtimationis tenetur: *f. C. de pœn. Jud. qui mal. jud.* Actor & reus corrumpentes, cauſa cadunt: *L. 1. C. d. t.* res ex hac cauſa fit *vitioſa*. (14) *8. pr.*

Notae variorum

(1) [illegible]

(2) [illegible]

(3) [illegible]

(4) [illegible]

(5) [illegible]

(6) [illegible]

(7) [illegible]

(8) [illegible]

(9) [illegible]

(10) [illegible]

(11) [illegible]

(12) [illegible]

(13) [illegible]

(14) [illegible]

TIT.

# TITVLVS XII.

## De L. Julia de annona.

H*ic coërcetur* (1) delictum publicum, quo rei cujuſvis ad annonam pertinentis abundantia & commercium dolò malo *impeditur.* (2) *2. h.* Pœna eſt XX. ſolidorum, *2. §. f.* & extraordinaria, pro *circumſtantiis*, (3) *37. de pœn.*

### *Notæ variorum.*

Annonæ ſugillatio [illegible]

(1) [*Hic coërcetur*] Annonæ crimen eſt [illegible] legem [illegible] hominibus tantum violat annonæ ſugillatur, ſed & [illegible] non [illegible] eſt, dum [illegible] pecunia [illegible]. Quæ tamen delictum [illegible] perſonam non reſpicit, adeoque [illegible] demonſtratur [illegible] de [illegible] quoque quæſtio eſſe [illegible]. Pœna verò delinquenti [illegible] quæritur, cum [illegible] ſub ſpecie [illegible] hæc quoque verò [illegible].

Rebellio [illegible] ad urbem [illegible]

(2) [*Impeditur*] Hoc pertinet, ſi [illegible] ad urbem [illegible]. *h. t. ab 75 ſeqq.*

(3) [*Circumſtantiis*] Quam ad pœnam [illegible], *poſſe*, dictum eſt ſupra ad *Titulum de Extraordin. Crimin. num. II. verb.* [illegible] *ſeqq.*

# TITULUS XIII.

## Ad L. Jul. peculat. & de ſacrileg. & de reſiduis.

*Junge l. 9. C. t. 28. 29.*

P*ECULATUS* (1) * hic eſt crimen publicum, quo pecunia publica ſacra vel religioſa *ſurripitur.* (2) *§. 9. I. de publ. Jud. 9. §. 2. L. 4. pr. h.*

* *ſtrictè eſt crimen* (3) publicum, quo pecunia publica ſurripitur ab eo, cujus fidei & periculo *commiſſa non eſt* (4) *4. pr. 9. §. 2. h.* Objectum ſunt omnes res mobiles, publicæ, *4. §. f. arg. 9. §. 2. Barb. ad W. h. Diſſ. Wenſeb. h.* ſc. ipſius reipublicæ Romanæ, *4. §. f.* quod Trajani conſtitutione extenſum eſt ad res civitatis: *4. in f.* (*obſ. 21.* (5) *de furt.*) *v. Faber ration. 2. th. 35.* Pœna hic eſt pecuniaria, quadrupli, *6. §. f. L. 9. f. h.* exigitur etiam ab herede; *f. h.* vel extraordinaria in privatis deportatio. *3. h.* in publicis ultimum ſupplicium: *§. 9. I. de publ. jud. L. un. C. h.* Hodiè pro criminis quantitate applicatur *pœna furti:* (6) *Theod. D. 2. th. 3. in f.* Præſcribitur. *5. annis.* (7) *7. h.*

*SACRILEGIUM* (8) eſt crimen publicum, quo pecunia ſacra *4. pr. §. 1. L. 9. §. 2.* vel religioſa, *4. h. 5. C. de ſepulchr. violat.* (non etiam privata: *5. h.* (*Obſ. 16. §.* (9) *4. de pœn.*) ex *loco ſacro ſurripitur,* (10) *9. §. 1. 10. §. 1. h. 16. §. 4. de pœn. Ca. q. 8. 9. num. 4.* De jure Can. & hodierno ſacrilegium eſt, quando vel ſacra res, vel aliquid ex loco ſacro ſurripitur: Adeoque tres ſunt ſacrilegii ſpecies: *can. ſi quis contumax. 20. §. ſacrilegium. cauſa. 17. q. 4. art. 171. §.* Pœna eſt Jur. civ. capitis, interdum gravior, interdum minor: *4. §. 2. 6. pr. 10. §. 1. h.* hodiè etiam eſt *arbitraria.* (11) ad ignem extenditur. *art. 172. 173. v. Ca. q. 83.*

Crimen *RESIDUI* eſt publicum, quo pecunia publica ab eo, cujus fidei & periculo ad certum uſum publicum deſtinata, data erat retinetur, vel in uſum proprium *convertitur* (12) *2. 4. §. 3. L. 6. § 6.* hac L. etiam illi tenentur, qui ex adminiſtratione publica fiſco aliquid debent, & intra annum non ſolvunt. *9. §. f. h.* Pœna hujus criminis eſt *pecuniaria,* (13) & reus punitur amplius tertia parte, quod ipſe

fiſco

[illegible] 300. fl. [illegible] 100. fl. [illegible]

## Notæ variorum.

[illegible]

perpetuo ſunt obligati *l. 20. C. de adminiſtr. tut.* In *Saxonia* tamen, ſi doloſe ultra 100. *florenos* ſubtraxerint, pœna eſt ſuſpendii. Si infra 100. *florenos*, ſed ultra 50. pœna eſt fuſtigationis. Si denique infra 50 *florenos* pœna eſt relegationis. *Carpz. Pr. Crim. qu. 85.* *Struv.* Jure *Saxonico Electorali* adminiſtratorem perfidum, ſiquidem ſummam 100. *florenorum* dolo ſubtraxerit, ſuſpendio plectunt *Part. 4. Conſtit. 41.* Quid autem, ſi reſtituere tantundem velit? *Carpzovius* hoc loco ſilet. Contra verò *Scabini Lipſienſes Anno* 1619. *P. F.* ſuſpendii pœnam dictitare, non dubitarunt, quæ deinceps ex gratia *Electoris Saxoniæ* in gladii pœnam converſa executionique mandata eſt. At enim verò inclementem illud eſſe judicium, nemo forsitan neget, qui perpendit, furem, qui verè conteſſus, reſtituendo id, quod ſurreptum fuerat, pœnas ordinaria levari. Ergò nec perfido adminiſtratori aliam jus capitandum erit, cum factum gravius ſit, reſiduo tramite, ut vel ex ſolo pœnarum utrarumque debiti diſcrimine colligitur. Nec diffido, ita hodiè *a Collegiis Saxonicis*, ex ſtilo conſulto, reſponſum iri. Illud verò memorabile eſt, prædictum etiamnum Reſidui totum. *P. F.* gratia à *Principe Electore* ſibi ſalva meruerit, contra quem ſecundum ſententiam juris *Saxonici* debuerat, tantummodo à ſe continere ordinaſſe, ut heredes interverſam pecuniam *Fiſco Electorali* reſtituerant, quæſtum etiam adeo haud ita pridem ſunt condemnati. *Berger.*

# TITULUS XIV.

## De L. Julia ambitus.

*Junge L. 9. C. tit. 26. C. de ambitu l. 5. t. 3. x de Simonia.*

A*mbitus* (1) eſt crimen publicum, quo tenentur illi, qui illegitimo modo honores, & dignitates ſibi parant: *L. un. C. h. N. 8. c. 1. 7. N. 161.* c. g. ſi quis Principis conſiliario pro ſuffragiis ad *conſequendos honores* (2) aliquid dederit *Harpr. ad §. 11. I. de P. I. n. 5. 6. Ludov. exerc. ſ. vid. L. 9. C. ſi cert. pet. N. 8. & N. 161.* *Pœna olim erat*, (3) ut reus intra quinquennium alios honores non peteret, deinde cœpit (4) eſſe 100. ſolidorum ex SCto, *Modeſtino* (5) docente, in *L. un. §. 1. h. ff. Matth. l. 48. t. 11. n. 3.* interdum etiam deportatio: *L. un. C. h. contra §. Weſenb. h. t. ſ. vid. Forſtner ad Tacit. p. 61. 62.* D E

*Simonia* (6) eſt rerum ſpiritualium emptio venditio *de qua tit. extra de Simonia.* D

(1) [*Ambitus*] Differunt *ambitus* & *crimen ambitus*. Ille eſt, quando quis munera, ad quæ ſe aptum deprehendit, licitè petit. Apud *Romanos* tamen, in ſtatu populari, ambiendi modus, multum abſurditatis ac ſtultitiæ habebat adjunctum, uti loquitur ex traditis *MATTH. tit. 11. c. 1. n. 1. 2.* Crimen ambitus eſt, quando quis data pecunia, vel, quod eodem redire videtur, operâ inhoneſtâ munus redimit, quod crimen non abſolute quidem, plerumque tamen juri naturali repugnare videtur, cum non apte ad munus, ſed pecuniæ ratio haberi, & qui munus emit, ut plurimum, ſi res ità ferat, illud cuique adminiſtrationem vendere iterum ſolent, nec obſtant exempla *Rerum publicarum* in quibus palam munera vendi ſolent, nam vel tyrannide, vel alia corruptione vexantur adeoque in ea venditio munerum admittitur, quo ſubditi pecunia emungantur, vel ne alias illa res miniſtro avaro & corrupto in quæſtum cedat, adde *MATTH. d. loc. c. 2. n. 3. Titius.*

(2) [*Conſequendos honores*] Jure *Codicis* hoc illicitum non fuit, ſed potius alio debetur ad conſequendum illud, quod *ſuffragiis* nomine promiſſum *l. un. C. de ſuffrag.* Imo adhuc hodiè multis *Principes* pro commendatione facienda licitè pecuniam accipere poſſunt, *Conf. l. 1. ff. h. t.* Aliud, ſi pro *adminiſtranda juſtitia* quid promitteretur. *Struv.* Pro ſuffragio licitè quid accipere.

(3) [*Pœna olim erat*] De damno reſtituendo hic nulla ſolet eſſe quæſtio, cum vel nondum aliquod datum ſit, vel non adeò conſtet, an ſi lud datum, hinc tantum pœna ambienti imponitur, de qua pluribus egit *Dn. D. Wenckler in Diſſert. Inaug. de ambitu habit. Heidelberg.* 1690. ubi per diverſa temporum periodos deducit, quæ in *Republica Romana* ambitus fuerit pœna. In ſpecie exagitat *Tribonianum* § 29. quod ergo *Theodoram in Nov. 8. c. 1.* nimis blandus fuerit, ac eo ipſo exiſtimationem *Juſtiniani* egregiè proſtituerit.

ſtituerit, accuſat quoque §. 30. quo efficientem, præcipuè quod L. un. C. de ſuffrag. Codex inſeruerit. Cum tamen tempore THEODOSII M. cujus iſta lex eſt, ambiens, crimen circa perſonam fecerit, adeoque illa lex contradicens leg. 16. C. ſi cert. pet. L. un. C. de ambit. l. 6. C. ad L. Jul. repet. & [illegible], quam ipſe Juſtinianus Nov. 8. cap. l. 7. §. confirmaverit. adde Zoeſ. ad ff. h. t. n. 4. ubi Juſtinianum nonnihil vapulat. Hodiè ambitus per largitiones factus ferè circa crimen, curè circa perſonam eſt. Conf. BRUG. Tr. de promot. honor. c. 3. n. 69. ſeqq. Titius.

Judicii inſtrumentum peteret in-[illegible]

(4) [Donando capere] Quam etiam pœnam incurrit, qui domum judicis ingreditur, informandi eundem cauſa l. un. §. 4. h. t. vide Brunnem. ibid. Quod Quidem obſervent, velim, Clientes, eorumque Patroni, caveantque ſibi, ob importunam & intempeſtivam [illegible] & juris ſui commendationem, cum tam ſancta [illegible] religio, qua tenetur judex, eundem ſolo officii [illegible] nem. Berger.

(5) [Modeſtinus] Non ità appellatur SCtum ſed Modeſtinus Autor eſt hujus legis, in quantum [illegible] ſic SCto. Bergi.

(6) [Simonia] Non tamen in hoc crimen incidunt, qui præbendas ſolent, ut vocant, honorario pro reſignatione acquirunt. vide Mart. Schoock. in Tr. de ben. Eccleſ. [illegible] l. c. 52. Bergi. Hoc crimine vel intelligitur crimen ambitus, quoad munera Eccleſiaſtica committendum, vel venum ſpiritualium, ut poteſtatis miracula faciendi, remiſſionis peccatorum aut Sacramentorum emtio venditio. Utroque reſpectu eadem pœnæ humanæ ſubjacet, Prior enim ſecularem, poſterior religionem opere externo lædit, quale abuſum rectè corrigitur. Pontificii rebus ſpiritualibus multa accenſent, in quibus nihil ſpiritualitatis reperitur, adeoque Simoniam inepte ſatis extendunt; vide Zoeſ. d. l. n. 5. Titius. Simonia.

# TITVLVS XV.

## De L. Fabia, de plagiariis.

D Plagium (1) eſt crimen publicum, quo liber homo, vel ſervus alienus doloſè ſupprimitur: l. 4. p. ſive id fiat vi, ſive abſque vi, perinde eſt: l. 1. 2. C. h. t. Pœna J.

E civ. quondam erat pecuniaria, l. ff. h. poſt arbitraria facta, itaque in metall. damnat. l. h. tandem gladio puniebatur, (2) l. C. h. §. 10. I. de P. I. quod etiam obſervat jus divinum, Can. & Saxonicum, (3) Deut. 24. v. 7. Exod. 21. v. 16. cap. 1. x. de furt. Haig. p. 2. q. 32. Theodor. D. 2. th. 3. Ca. q. 83. num. 90.

D Quaſi plagium (4) ſive literarium committitur in alienis ſcriptis doloſè transſcribendis, ſuppreſſo auctoris nomine, & pro ſuis venditandis, de quo Spekhan. q. 1. c. 8. num 16.

### Notæ variorum.

Plagium eſt delictum contra jus naturale.

(1) [Plagium] Eſt dubio procul delictum contra legem naturalem admiſſum, non enim jus alterum tantum, ſed & ipſius ſervi [illegible] læditur. Præter damni reſtitutionem, plagiarius quoque ad pœnam tenetur, quam tamen lex divina poſitiva univerſalis non determinat, hinc illa diſpenſationi humanæ ſubjacet. Titius.

(2) [Puniebatur] Conſideranda hic eſt intentio ſurripientis, ſi enim quis puerum hac intentione rapuerit, non ut in ſervilem ſtatum deducat, ſed ut operæ ejus utatur, pœna non eſt capitalis. Bergi.

(3) [Saxonicum] Idque probat Exemplum Conradi Kauffung / plagiarii Ducum Saxoniæ Ernesti & Alberti. Quam hiſtoriam prolixè recenſet Petr. Albin. in Chron. Miſn. p. 1. cap. 22. ubi hanc pœnam capitalem ſubierunt quoque ii, qui operam & conſilium præſtiterunt. Carpzov. qu. 83. n. 93. Bergi.

(4) [Quaſi Plagium] Eſt injuria, qua quis alienas meditationes, ſuppreſſo vero Autore, ſibi tribuit, atque ità laudem, quam alius meretur, in ſe transferre cupit. Eſt hoc delictum omninò contra legem ſocialitatis, quæ tamen plerumque neglecta eſt, & magis ſtultitiam autoris oſtendit, quam alii nocet, ideò in foro externo puniri non ſolet, quamvis dubium non ſit, quin pœna in illud conſtitui poſſit, adde Diſſertat. J. THOMASII de Plagio Literario. Gravius plagio illo delictum eſt, quo tenebriones ineptis ſuis nomen Viri celebris præponunt, quo illis et nominis pretium accedat, quod quidem inſigniter intendunt. [illegible] Titius. Quaſi plagium.

TIT.

# TITULUS XVI.

## Ad ſenatusconſultum Turpillian. & de abolit. crimin.

*Junge lib. 9. C. tit. 45. 46.*

Peccant *accuſatores* (1) in his judiciis * (1.) Calumniando, h. e. alios dolo malo falſi criminis accuſando: 1. §. 1. h. vid. l. 233. pr. de V. S. Et tum illorum frontibus inurebatur litera K. 1. §. 2. h. leg. 13. de teſt. Jure Codicis pœna erat talio: 17. C. de pœn. ſ. C. de accuſ. hodie eſt *arbitraria.* Cz. q. [illegible]

* (2.) Prævaricando, h. e. dolosè colludendo in judicio publico cum reo, ut ipſe *abſolvatur* (2) 1. §. 6. h. Tales publico judicio accuſantur, 3. pr. §. 1. de prævaricat. vid. tit. de prævaricat. lib. 47. tit. 15.

* (3.) Tergiverſando ſive intermittendo publicam accuſationem, abolitione non interveniente 1. §. 1. 6. §. 2. leg. 13. h. Hi incidunt in SCtum Turpillianum, non tamen publicam accuſationem, 3. §. ſ. de prævaricat. & puniuntur infamia, l. 2. C. SC. Turpill. & quinque libr. auri, 3. §. ſ. de prævaricat. & ab accuſatione repelluntur. 2. h.

*Abolitio* * eſt neceſſitatis accuſationem peragendi remiſſio; eſt vel * ſpecialis ſive privata, quam judex competens 1. C. de Abolit. accuſatori petenti, 4. §. 2. de damn. infect. 10. pr. h. 2. C. de abolit. ex *juſta cauſa*, (3) 2. C. de abolit. 30. C. ad leg. Jul. de adult. concedit. Hic etiam conſenſus rei requiritur, niſi abolitio petatur re adhuc integra. (h. e. antequam reus *aliquid paſſus ſit*) (4) & quidem intra XXX. dies, à tempore inſtitutæ accuſationis. l. 3. C. de abolit. ſ. pr. §. 1. Abolitionem non impetrant accuſatores criminis læſæ majeſt. patriæ oppugnatæ & proditæ, peculatus. 3. in ſ. C. de abolit. Accuſator *omnino deſiſtat*. (5) 11. §. ſ. de accuſ. 4. §. 1. h. neque illud crimen rurſus accuſare poteſt. d. l. niſi ſpecialiter impetraverit *à Principe.* (6) 3. C. de abolit. vel niſi à cauſa capitali tanquam à cauſa pecuniaria impetraverit: ſ. §. ſ. h. hic enim judex accuſationem reſtituit, quaſi ex tali cauſa abolitam. * Generalis ſive publica, vel ipſo jure, vel SCto conceditur. hæc reſpectu reorum dicitur exemtio liberat va 12. in ſ. h. e. g. tempore *feriarum paſchalium* (7) rei *leviorum criminum* (8) eximuntur ipſo jure ab accuſatione: 3. C. de Epiſc. aud. 12. h. propter 8. in 12. h. Feriis durantibus ſuſpenditur accuſatio, iiſdem finitis poteſt accuſator, ſi velit, iterum accuſare, ſi nolit, deſiſtere. 12. h. v. 1. 2. C. de general. abolit. in. §. 2. h. * Legalis eſt, quæ à L. conceditur, reo, vel accuſatore mortuo vel accuſatore impedito, 10. pr. 15. §. 3. h. niſi accuſatio contra heredem *fieri poſſit* (9) 15. §. 3. Aggratiatio eſt partim à Principe *abolitio*, (10) 1. 2. 3. C. de ſent. paſſ. vid. Gilhard. in tr. de princip. Jur. Pross. in 10. C. de general. abolit. Carpz. q. 150.

### *Notæ variorum.*

(1) [*Peccant accuſatores*] Calumnia & Prævaricatio [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] Tergiverſatio [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]

Ttt ttt ttt 3

[illegible]

[illegible]

[illegible]

ſimplicitatem vel calorem, dum ſuam ſuorumque Injuriam vindicare intendebat, ad accuſationem ſe proſiliiſſe dicebat, *l. 2. C. de abolit. l. 5. & 6. C. ad SCt. Turpil.* & fiebat tunc abolitio inſcio etiam accuſato. Exceptio erat, ſi vel carceres, vel tormenta, vel verbera, vel catenas jam ſuſtinuerat, tunc enim ipſius quoque conſenſus accedere debebat, *l. 3. C. de abolit.* Vides iterum, diſtinctionis uſum intuitu eorum, *qui in publicis Judiciis alios accuſant,* ſe unicè exſerere; At verò notum eſt, tales accuſatores apud nos vel planè non dari, vel admodum raros ad minimum eſſe, unde prono alveo etiam profluit, diſtinctionem hodie in praxi nullius vel exiguæ eſſe utilitatis. Equidem vocabulum *abolitionis* haud rarò adhuc hodie auditur, quando ſcil. Inquiſiti pro caſſatione Proceſſus Inquiſitorii adverſus ipſos moti Principi ſupplicare ſolent; ſed prout quilibet videt, hæc abolitio (quæ oblata certa pecuniæ quantitate fieri ſolet) toto cœlo ab abolitione Romanorum differt, & eſt potius *Aggratiatio*, quam abolitio. Scilicet apud Romanos abolitionem petebat *accuſator*, hodie autem *accuſatus*, ſive potius *inquiſitus*, confer *Struv. Ex. 49. th. 89. Ludovic. diſſ. 2.*

# *TITULUS XVII.*

## De requirendis reis vel abſentib. damnand.

*Junge l. 9. C. tit. 40.*

Q*uomodo abſentes evocentur*, (1) & bona eorum annotentur, *vid. tit. de accuſat. in Subjecto paſſivo.*

### *Notæ variorum.*

(1) [*Quomodo abſentes evocentur*] Quæ de proceſſu contra abſentes, ex jure Civili dicuntur, exigui in *Germania* ſunt uſus, cum in ſingulis ferè Provinciis peculiaris procedendi modus obtineat. In *Saxonia* in uſu eſt *Bannum*, quod abſentibus infligitur, de quo *Cz. p. 3. proc. crim. p. 140. Dec. Saxon. 77. Thoms.* Requiſitio eſt actus quo criminis gravioris accuſatus, delatusvè publicis Edictis vocatur ad deducendam innocentiam ſuam, *l. 1. pr. §. 2. ff. h. l. 1. C. h.* Interim abſentis bona annotantur, ut ſi intra annum comparuerit, & innocentiam ſuam deduxerit, ea recipiat. At, ſi non comparuerit, eadem Fiſco irrevocabiliter addicantur, *l. 5. ff. h. l. 2. C. h.* cujus annotationis hanc eſſe normam voluit *O. C. a.* 206. ut (1.) omnia bona fugitivi, etiam immobilia, judicialiter adhibitis duobus tribusve proximè fugitivo junctis perſonis, annotarentur, ſervarenturque in uſum uxoris, liberorum heredumvè, ne quid ex iis ad fugitivum perveniret, ſi quæ tempore peritura ſint, diſtrahi jubentur, & pretia eorum judicialiter aſſervari. (2.) Proximè conjunctis perſonis eorum bonorum cuſtodia committeretur, dummodo caverent de bonis aſſervandis, nec ad fugitivum ante cauſam finitam transferendis (3.) uxori, liberisque neceſſaria ex iis alimenta ſuppeditarentur, *d. a. Engelbr. ff. h. t. §. 85. Menchen.*

# *TITULUS XIIX.*

## De quæſtionibus.

*Junge l. 9. C. tit. 41.*

D Quæſtio eſt interrogatio, *10. C. h.* ex juſta cauſa, à judice, per corporis cruciatus, maximè *de crimine commiſſo*, (1) ad eruendam ejus veritatem legitimè inſtituta: *12. C. h. Bocer. tr. de quæſtion. c. 1. n. 12. 13. Cz. q. 117. n. 17.*

N *Earum uſus* (2) à quibusdam rejicitur, *Bach. & Zepper.* periculoſus eſt, & eo cautè procedendum: *1. §. 23. leg. 7. 8. Hahn. h. n. 2. Beſold. voce* Peinliche Frage.

C *Quærit Judex* (3) competens, *2. de appell. recip. 1. pr. h. 178. de R. J. 5. C. de defenſ. civit. Bocer. d. l. Gentil. de jurisd. lib. 3. c. 10. Cz. q. 117. n. 19. Gail. de P. P. lib. 2. c. 2. n. 16.*

*Adhi-*

[illegible] in officio in processu Inquisitorio, [illegible] non etiam [illegible] in alia probationes deficiunt [illegible] (quod pariter debet asseverare [illegible] accusator [illegible]) quod tamen hodie non observatur, [illegible] non etiam de facto confesso aut convicto, [illegible] aut de circumstantiis aut certe res adhuc dubia sit, [illegible]) Et legitima adsint indicia [illegible] alias enim tortura & confessio est ipso jure nulla [illegible] nec licet post eam supervenient indicia [illegible] legitima, [illegible] & reus perseveret in confessione [illegible] & tortura ad inferendum [illegible] [illegible] quae indicia autem sint legitima, judicis cognitioni [illegible] In genere INDICIA [illegible] sunt argumenta, vel praesumptiones demonstrativae; & sunt vel [illegible] communia omnium criminum, [illegible] Necessaria, quae rem per necessariam consequentiam demonstrant, [illegible] si virgo sit praegnans, [illegible] haec non faciunt ad torturam, sed ad condemnationem; [illegible]

[illegible] Non necessaria sive probabilia sunt, quae ex probabilibus argumentis rem demonstrant, suntque [illegible] minus plena, quorum singula ad torturam non sufficiunt, sed conjuncta demum eidem locum faciunt [illegible] dicuntur etiam remota, sive minora, ut (1) Vox [illegible] & fama, [illegible] in eodem genere delicti [illegible] modo orta sit ex viris fide dignis, [illegible] & personae sit suspectae, [illegible] loco delicti, [illegible] conversatio cum facinorosis hominibus, [illegible] inimicitia capitalis cum laeso [illegible] Assertio vulneratі [illegible] facta, & morte vel juramento comprobata [illegible] Inculpatio vulnerati majoris est momenti, [illegible] legitima indicia, [illegible] (7) Fuga, [illegible] sine justa causa [illegible] (8) Varians sermo, ipsius rei [illegible] circa ipsum principale negotium [illegible] item trepidatio [illegible] haec etiam referunt malam physiognomiam, occultationem [illegible] &c. [illegible]

[illegible] plena, sc. quoad torturam, quorum singula sufficienter ad torturam faciunt probationem, [illegible] ut (1) si [illegible] suspectus in loco delicti reperiatur [illegible] hoc tamen admittit probationem in contrarium: (2) [illegible] testis omni exceptione major de ipso delicto deponat, [illegible] (3) socii criminis nominatio legitima: [illegible] (4) quae facta

facta eſt ad generalem *judicis interrogationem* [25] in ipſa tortura. ex quo ſequitur (α.) quod ſpontanea nominatio non ſit legitima, (β.) quod nominationem præcedere non debeat ſpecialis interrogatio de certo *individuo*. [27] *1. §. 31. h.* niſi certa contra illum adſint indicia: *Steph. ad art. 31. n. 2. in f. L. 1. §. 21. h.* (γ.) nominatio fieri debet in tortura. *Cz. q. 121. n. 21. arg. 11. C. de teſt. f. C. de accuſ.* (2.) Si judex interrogaverit de omnibus *circumſtantiis*, [28] an, quando, ubi, &c. *art. 31. verſ.* Zum andern gebühret ſich. (3.) quæ facta eſt *abſque affectu*, [29] (4.) ſi in nominatum etiam cadat ejuſmodi delicti ſuſpicio: (5.) in ea perſeveret nominans: Ex his quinque, ſi unum deficiat, non ſufficit nominatio ad torturam, ſed ad inquiſitionem: *Carpz. q. 121. n. 37. Bocer. c. 3. n. 53. &c.* (4.) *Seria* [30] extra judicialis confeſſio perſonæ alioquin ſuſpectæ: *art. 32. Cz. q. 121. n. 41.* (5.) Si perſonæ ſuſpectæ minas qualificatas (e. g. Ich will ihn durch und durch ſtoſſen.) factum *mox ſecutum* [31] ſit: *art. 32. Cz. q. 121. n. 50.* (6.) *auxilium* [32] & præſidium facinoroſis qua talibus, ſcienter & doloſè præſtitum; *art. 40. arg. leg. 7. §. 7. de dol. mal.* plura habet. *Cz. q. 121. n. 61. Bocer. de quæſt. c. 3. Zanger de tort. c. 2.* D

* propria certorum criminum; ut * (I.) *Homicidii*, [33] (1.) Si quis in loco homicidii occultè perpetrati reperiatur cum armis & veſtimentis ſanguineis hoc ſufficit ad torturam: *art. 33. v. Sand. lib. 5. tit. 9. dec. 14.* (2.) Si quis ex interfecti rebus aliquid habuerit, *art. 33.* hoc etiam ſufficit ad torturam, ſed utrumque admittit probationem in contrarium: (3.) Si quis homicidium confiteatur, ſed neget ſe animo occidendi *feciſſe*. [34] *Cz. q. 122. n. 7. 8. 9. &c.*

* (II.) Veneficii, ſi quis venenum emerit, præparaverit eoque interfecerit, ob ſpem lucri, dignitatis, aut ob inimicitias: hoc: *ſufficit* [35] ad torturam: *art. 37. Cz. q. 122. n. 15. 16. 17.*

* (III.) Infanticidii, ſi virginis uterus ſucceſſivè intumeſcat, poſt modum ea macra exiſtat, ac livida *art. 35.* ſi in mammis lac deprehendatur & alia indicia concurrant: *art. 36.* vel fœmina dicat, ſe infantem mortuum peperiſſe, dum ſola abſque aliis fœminis *pepererit*: [36] *art. 131. ferè in f.* Fluxio ſanguinis ex cadavere *occiſi non ſufficit.* [37] *18. §. 1. Cz. q. 122. n. 30. Theod. D. 9. th. 9. H. Bocer. de quæſt. c. 3. n. 22. Heig. p. 1. q. 30. n. 96.* aliis indiciis tamen concurrentibus hoc omnino negligendum non eſt.

* (IV.) Furti, rapinæ, latrocinii, &c. Si ejuſmodi res ſit in cuſtodia perſonæ ſuſpectæ, *art. 38. Carpz. qu. 122. n. 47.* & hic probare non poſſit, *ſe eam comparaſſe*, [38] *Carpz. q. 122. n. 50. &c. art. 38. 41. L. 2. 5 C. de furt.*

* (V.) Sortilegii ſive maleficii, *recenſentur* [39] in *art. 44. de quib. vid. Bodin. lib. 4. Dæmon.* Impoſitio in *aquam frigidam* [40] fallax eſt: *Bocer. d. quæſt. c. 3. num. 105. Carpz. q. 122. n. 69. arg. 1. §. 17. ff. 1. §. 1. C. de quæſt.*

* (VI.) Adulterii, ſi nudus cum nuda in lecto reperiatur: *Cz. q. 122. n. 70.*

* (VII.) *Incendii*: [41] *Vid. art. 41.*

* (VIII.) *Proditionis*. [42] *art. 42.*

* (IX.) *Falſæ monetæ* [43] *Cz. q. 122. num. 84.* Plura *vid. apud Bocer. tr. de quæſtion. c. 3. Zang. Brunnem. tr. de indic.*

pr. Hæc indicia *ſunt probanda* [44] plenè, per duos teſtes, omni exceptione majores. *art. 6. 23. 30.* quos judex examinat, de jure civili, ipſe, hodiè etiam per alios, *Sichard. in C. ad L. 18. de fid. inſtr.* §. Si unus teſtis de proximo indicio deponat, ſufficit ad territionem, *Zang. c. 2. n. 81. Carpz. q. 123. n. 19.* His ita probatis, reus contra-

dum

[illegible] probatum eſt [illegible]: [illegible] quæ referuntur ad indicia, *O. C. art.* [illegible] etiam poſt ſententiam, [illegible] (quæ etiam non petenti *ſunt communicanda* [illegible]) eſt maxime favorabilis, ita, ut pro eo admittatur unus teſtis etiam inidoneus, ut frater, &c & teſtis de credulitate, &c. *Maſcard. de probat.* [illegible] *Menoch.* [illegible] *Boer. de quæſtion.* [illegible] Hæc ita perpenſa judex diligentiſſime ponderet, ita tamen, ut facilior ſit ad abſolutionem, quam ad torturam, *O. C. art.* [illegible] præſertim (1.) ſi reus non aufugerit, cum potuerit, [illegible] (2.) ſi judici ſeſe ſponte exhibuerit, (3.) ſi ea nocte, qua commiſſum eſt homicidium, quiete dormiverit, *Vid.* [illegible] (4.) exculpet eum ipſe læſus. [illegible] (5.) ſi teſtes extra judicium revocaverint teſtimonium ſuum, [illegible] (6.) ſi bene antea vixerit, bonum famam habeat. &c.

*TORTURÆ* [illegible] *ſunt variæ ſpecies*, [illegible] *Brun. de indic.* [illegible] *Gartand. de quæſt.* [illegible] *Damhaud.* [illegible] *Hippol. de Marſil.* [illegible] judex adhibeat *aſperas*, [illegible] *Clar. lib.* [illegible] & quidem pro ratione perſonæ delicti, & indiciorum. [illegible] *O. C. art.* [illegible] Q

Torquentur omnes, qui ſpecialiter non excipiuntur [illegible] ut* (1.) ob defectum* judicii furioſi, [illegible] licet ante furorem deliquerint [illegible] *impuberes*, [illegible] pubertati proximi tamen terreri poſſunt: [illegible] *Miles* [illegible] poteſt torqueri, [illegible] *& Inſtic* [illegible] etiam abſque curatore. [illegible] Surdus & mutus natura. [illegible]

* virium, Senes, [illegible] (hic non tam anni, quam corporis vigor ſpectatur. [illegible]) decrepiti terrentur [illegible] *Valetudinarii*, [illegible] & *Epileptici* [illegible] laborantes moderate torquentur [illegible]) Fœminæ prægnantes, (licet ante paucos dies illegitime conceperint, hic nec termino locum habet [illegible]) Puerpera intra 40. dies poſt partum. [illegible]

* (2.) ob dignitatem, virtutem, labores reipub. præſtitos, Epiſcopi & presbyteri, [illegible] (reliqui *Clerici torquentur* [illegible]) de jure civ. viri clariſſimi, [illegible] (quibus hodie comparantur perſonæ illuſtres, [illegible]) Decuriones, eorumque liberi uſque ad pronepotem, [illegible] (quibus hodie comparantur Conſiliarii, Senatores, præcipue in civitatibus imperialibus.) *Nobiles*, [illegible] *Doctores* [illegible] & profeſſores, [illegible] militum, eorumque liberi primi gradus, [illegible]

ter da, niſi (1.) *nova indicia* (90) ſupervenerint, *ib. §. 1. h. Tabor. racemat. 5. th. 10. Beſold. Vol. 3. conſ. 109. n. 2. 8 & ad O. P. W. p. 470.* [illegible] *h. in f. Carpz. q. 125. n. 50.* (*obſ. 10. h.* (100) *art. 58*) *vid. Ca. q. 125. n. 42.* (2.) Reus corpus vel animum *induraverit* (10) magica vel alia arte, *ib. §. 1. h. Ca. q. 125. n. 65. Faber in C. h. n. 3.* tùm enim repetitur tortura ad arbitrium judicis, non tamen ultra tertiam vicem: *Beſold. ad O. P. W. p. 470. Carpz. q. 125. n. 50. &c.*) adeoque abſolvitur reus, *4. C. de Edendo. f. ff. de Calumn. definire.* (11) *f. de calumn. 3. C. de ſent. & interlocut. 4. C. de Edend. O. C. art. 61. Bach. V. 2. D. 31. th. 5. G. Bocer de quæſtion. c. 6. n. 4. Theodor. D. 9. th. 11. B.* Ita tamen, ut exceptio rei judicatæ tantum priori accuſationi obſtet, & novis ſupervenientibus indiciis nova accuſatio admittatur. *Carpz. q. 125. n. 7.* (*v. Diſſ. Menoch. de præſumpt. Zanger de quæſt. c. 5. n. 2. 3. Gerland. &c. Myſ. 5. O. 11. 12. Beſold. ad O. P. W. p. 477. & V. 4. conſil. 208. 209.*) *Urphedam* (12) tamen præſtat: *Ca. q. 125. n. 14. & q. 129. n. 44.* Carnifici judex *ſatisfacit.* (13) *art. 61.*

* *confitente*, (90) * *ſed paulo poſt* (94) iterum negante, *reiteratio* (95) torturæ: *O. C. art. 57.* qui ſi in ſecunda tortura conſtanter neget abſolvendus eſt; ſin confiteatur, & poſtea iterum revocet, tertium torquendus eſt: *art. 57.* quod ſi *etiam bis confiteatur*, (96) & paulo poſt *negat*, (97) *extra ordinem puniendus eſt.* (98) *Bocer. de quæſt. c. 5. n. 39. vid. Cz. q. 126. n. 50. Zanger de quæſt. c. 5. n. 81.*

* conſtanter, condemnandus eſt modò confeſſio ſit *veritati conſentanea*, (99) *art. 60. Cz. q. 126.* (in dubio ad extraordinariam pœnam deveniendum) & ritè ſit *ratificata*: *1. C. de confeſſ. variorum art. 56.* ad quod requiritur (1.) ut ratificata ſit extra locum torturæ, *2. C. de confeſſ. variorum art. 56. §.* Der Gefangene ſol (2.) poſt aliquod tempus, ſc. ad minimum poſt *diem & noctem*, (100) nec ultra tres dies *differenda* (1) *art. 56.* (3.) Coram judice, præſentibus duobus aſſeſſoribus, cum actuario; *art. 56. in f.* (4.) & hæc ratificatio diligenter conſignetur, quam actuarius reo prælegere & judex reum ſuper eam *interrogare* (2) debet; *art. 56.* (hæc ratificatio etiam *in territione* (3) eſt neceſſaria) *1. C. quorum appell. non rec.* & hæc reſponſio à tacente reo tortura eſt exprimenda: *Ca. q. 126. n. 75.* quod ſi ratificationem in die executionis demum revocaverit, ex juſta cauſa, executio *fieri non poteſt* (4) *ib. d. art. 91. Carpz. q. 126. n. 65.* (5.) & tortura fuerit *juſta* (5) alias enim omne, quod illam ſequitur, eſt ipſo jure nullum, *art. 20. Cz. q. 126. n. 8. Zanger de quæſt. c. 5. n. 30.* & Judex tenetur actione L. Aquil. vel injuriarum: quandoque etiam *ultimo ſupplicio* (6) afficitur *Carpz. q. 127. n. 7. &c.*

## *Notæ variorum.*

(t) [*De crimine commiſſo*] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]

[illegible] dendo Principem? [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]

(2) [*Reum aſſui*] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]

[illegible]

(1) [illegible]

[illegible]

(4) [illegible]

(5) [illegible]

(6) [illegible]

(7) [illegible]

[illegible]

(8) [illegible]

(9) [illegible]

(10) [illegible]

(11) [illegible]

(12) [illegible]

(13) [illegible]

[illegible]

[illegible]

[illegible]

[illegible]

(41, [illegible]) Quando [illegible]

(42) [illegible]

(43) [illegible] Quoniam [illegible]

(44) [illegible]

(45) [illegible]

(46) [illegible]

(47) [illegible] Tenor est [illegible] Tenor ipse [illegible] der bloße Vorschlag [illegible]

[illegible]

(48) [illegible]

(49) [illegible]

(50) [illegible]

(51) [illegible]

(52) [illegible]

(53) [illegible]

(54) [illegible]

(55) [illegible]

(56) [illegible]

(57) [illegible]

(58) [illegible]

(59) [illegible]

(60) [illegible]

(61) [illegible]

(62) [illegible]

(63) [illegible]

(64) [illegible]

(65) [illegible]

(66) [illegible]

(67) [illegible]

(68) [illegible]

(69) [illegible]

(70) [illegible]

(71) [illegible]

(72) [illegible]

(73) [illegible]

(74) [illegible]

(75) [illegible]

(76) [illegible]

(77) [illegible]

(78) [illegible]

(79) [illegible]

[illegible]

[illegible]

ſic *Scabinos Lipſienſes* olim reſpondere ſolitos, refert *Carpzovius quæſt.* 126. *n.* 55. Quin etiam ſemel in ſententiam Curiam *Friſiam* pronunciaſſe, memorat *HUBERUS præl. hoc num.* 9 quamvis eandem ibidem pro ratione indiciorum & evidentiam temperet. Cæterum laudatus *Carpzov. num* 58 in pœnam inclinat extraordinariam, inprimis relegationis. Quamvis rectius fortaſſe conſuluerit, ut ejuſmodi Reus, qui toties revocaverit, pro conditione perſonæ, vel ad ergaſtulum aut opus publicum damnetur, vel carcere coerceatur, tum ut Reus ſiquidem innocens fuerit, corporaliter non puniatur, ſin nocens, metu operis, ergaſtuli vel carceris, ad veritatem dicendam commoveri queat. *Berger.*

(90) [*Veritate Conſentaneo*] Ut ſcilicet conveniat cum corpore delicti & circumſtantiis facti. *Stryk.*

(91) [*Diem & noctem*] Ut ſcilicet aliquantisper remiſerint dolores. *Stryk.*

(92) [*Differendo*] Ut autem hic omnis evitetur eo in eo cavendum à judice, ne reus ante factam ratihabitionem in carcerem conjiciatur, in quo alii captivi degant, ſed in carcere ſeparato aſſervandus. *Stryk.*

(93) [*Interrogare*] Hac interrogatio verbis emotionibus facienda cum obteſtatione conſcientiæ, ne hinc negando, vel falſum affirmando gravet, ſed liberè confiteatur facinus. *Carpz. quæſt.* 126. *n.* 33 *Stryk.*

(94) [*In territione*] Quia & hic mera tormentorum facta eſſe potuit confeſſio; *Brunn. Proc. Inquiſ. c.* 8 *membr.* 5. *n.* 83. *Stryk.*

(95) [*Fieri non poteſt*] Sed iterum torquendus. *Stryk.*

(96) [*Juſta*] H. e. modo facit ex indiciis legitimis dictata. *Stryk.*

(97) [*Ultimo ſupplicio*] Si ſc. per torturam ſine indiciis adhibitam hominem necaverit. *Stryk.*

# TITULUS XIX.

## De poenis.

*Junge l. 9. C. tit. 47.*

D Poena eſt malum paſſionis quod infligitur propter malum actionis: *Grot. de*
† *J. B. & P. l. 2. c. 20. n. 1.* Eſt vel * Conventionalis, quæ orta ex conventione A
D partium: hæc etiam *ab heredibus* (1) exigitur: *47. de A. E. V. §. f. I. de V. O*
D * Teſtamentaria, quæ orta ex Teſtatoris dis- a.
D poſitione: hæc veteri jure prohibita erat, hodiè *licita eſt.* (2) *§. f. I. de Legat.*
† * Legalis, quæ LL. conſtituta eſt: *51. pr. §. 2.* a.
D *I. de O. & A.* hæc eſt * (1.) * Civilis, quæ reſpicit privatum actoris intereſſe: *9. §.* B
*5. de publican. §. 10. I. de injur.* C

* Criminalis, quæ publicum intereſſe reſpicit: *9 §. 5. de publ. Cz. q. 102. n. 29.* c.
*30.* hæc iterum eſt vel * capitalis, quæ adimit caput hominis, vitam ſc. D
* *naturalem*, (3) ut decollatio, *8. §. 1.* ſuſpendium in furca, E
*28. pr.* vivi concrematio, *28. pr. §. 11. h. tot. C. d. Nih agger* objectio beſtiis, *11. §. f. h.*
*vid. Rath. ad VV. h. n. 3. Carpz. 128. n. 26.* vivi defoſſio, ſtipite peracuto, per corpus transfixo, *art. 131.* ſubmerſio in aquis, *9. de parricid.* vide plura *Cz. q. 128. n. 26.*
* civilem * libertatem, *2. pr. 28. h. 103. de V. S.* damnatio in e.
metallum, vel opus metalli, *8. §. 6. 17. §. 1. h. hodiè damnatio ad triremes* (4) *Cz. q. 129.* F
*n. 8.* * civitatem, perpetua condemnatio ad opus publ. f.
*17. §. 1. h.* temporalis condemnatio eſt *tantum civilis* (5) pœna: *28 §. 1. h. 17. §. 1. h. 2.*
*§. 1. h.* * non capitalis, quæ non ad capitis periculum reſpicit: *28.* d.
*§. 1. h.* ut infamia, *vid. tamen* (6) *103. de V. S.* relegatio, fuſtigatio, membri abſciſſio, confinatio, ſtigmatis *impreſſio*: (7) *17. C. de pœn. vid. §. 2. J. de publ. jud. 2. 28. §. 1. h. Cz. q. 129. num. 10.*
† * (2.) ordinaria: quæ à L. determinata ac definita eſt: *10. §. f. de vi publ. 1. §.* h.
*1. de*

l. *de offic.* [illegible] *Extraordinaria*, [a] quæ non eſt à LL. definita, ſed judicis arbitrio relicta, l. §. 1. *de offic.* [illegible] *vid.* ll. *pr.* [illegible]

*HODIE:*

*Pœna eſt* * *civilis*, [b] die bürgerliche Straffe / quæ non afficit corpus, die nicht auf Haut und Haar gehet, ut pœna pecuniaria, *Ca. q.* [illegible] carceris, confiſcatio, relegatio, perpetua & temporalis, infamia, detruſio in monaſterium, &c. *N.* [illegible] *(ubi art.* [c] 104. 110. 196. *Reink. de R. S & E.* [illegible]) *vid. Hahn,* [illegible] [d] *Ca. q.* [illegible]

* *criminalis*, quæ corpus afficit, die an Haut und Haar gehet: *Ca. q.* [illegible] *Hahn. ad WW. h.* hæc * *capitalis*, eine Lebens-Straffe / qua tollitur vita naturalis: *Theodor. D.* [illegible] *Cz. q.* [illegible] ut Decollatio, Suſpendium, Supplicium rotæ, (quomodo hic procedendum ſit, Judex [illegible] [e] mandat: *Ca. q.* [illegible] *& q.* [illegible]) Suffocatio in aqua, *art.* 130. 131. 159. [illegible] *Cz. q.* [illegible] Combuſtio, &c. Diſſectio in partes: *O. C. art.* [illegible] *Carpz. q.* [illegible] Aggravantur hæ pœnæ quandoque, ita ut quis trahat in pœnam: *vid. O. C. art.* [illegible] vel rotæ, *Cz. q.* [illegible] adducatur ferro candenti, *art.* [illegible] Deteſſio, qua tamen ubique ferè in *deſuetudinem abiit.* [f]

* non capitalis, eine Leibes-Straffe / quibus corpus quidem afficitur, vita naturalis autem non adimitur, ut *fuſtigatio*, [g] *art.* [illegible] cui hodiè ferè ſemper adhæret perpetua relegatio, *art.* [illegible] quæ tamen ita moderanda eſt, ne vitæ noceat: *art.* [illegible] *Cz. q.* [illegible] *vide Beſold.* [illegible] Ruten außſtreichen. Abſciſſio auris, *digitorum*, [h] linguæ, *manus* [i] *art.* [illegible] *Cz. q.* [illegible] Membrorum extenſio, wippen: *Cz. q.* [illegible] *&c.* Condemnatio ad triremes.

*Infligitur* [k] *Jure naturali*, [l] [illegible] *de V. S.* [illegible] *de LL.* (*Diſſ. Grot. de J. B. & P. lib.* [illegible]) *Vid. Matth. de crim. ad lib.* [illegible] *Civili*, &c. Autoritate Judicis, qui ut plurimum adhibet JCtos. *art. fin. Cz. q.* 116. *Vid. Boer. de* [illegible] & pœnam facto convenientem imponit, *N.* [illegible] *c.* 10. *L.* 1. §. [illegible] *ad SC. Turp.* [illegible] *ad* [illegible] §. 1. *de* [illegible] nam leviorem, quam cauſa poſtulat, pœnam irrogans *fit infamis* [m] [illegible] §. [illegible] *C. de* [illegible] *publ. Vid.* [illegible] *C.* [illegible] per miniſtros publicos, lictores, carnifices, &c. de quorum *conditione* [n] *Vid. Can.* [illegible] *Carpz. q.* [illegible] *Jul. Clar. lib.* 5. [illegible] §. [illegible] *q.* [illegible] *Cz. q.* [illegible]

*Facinoroſo* [o] ipſi, [illegible] C. h. l. §. 12. 13. *L.* [illegible] *pr. de vi & vi arm.* [illegible] §. 7. *de* [illegible] 7. §. [illegible] *L.* [illegible] *de* [illegible] *& l.* [illegible] *C. ne filius pro patr.* *Ezechiel. c.* 18. *Deut. c.* 24. [illegible] 16. *Cz. q.* 131. [illegible] non etiam heredi, [illegible] 26. [illegible] §. 1. *de R. J.* niſi ſit *lis conteſtata* [p] hic enim reus quaſi contrahit, & promittit ſe ſoluturum, quod continebitur in ſententia. [illegible] §. 11. *de pœnis.* [illegible] *Sal.* [illegible] *de accuſat. Grot. de J. B. & P. lib.* [illegible] *& f.* [illegible] *de accuſ.* [illegible] Differtur pœna *mulieris gravidæ.* [q] [illegible]

*Pœna infligenda* [r] adæquatur delicto, hinc earum æſtimatio fit ſecundum proportionem geometricam *infligenda autem* [s] ſecundum proportionem arithmeticam: [illegible] *Fr. ad l.* [illegible] *de J. & J.* [illegible] *Harpr. in Eth. lib.* [illegible] *L.* 11. [illegible] *N.* [illegible] *c.* 10. *Propter juſtitiam* [t] divinam, [illegible] *cauſ.* [illegible] *q.* [illegible] emendationem delinquentis, [illegible] terrorem aliorum, [illegible] *C. ad L. Jul.* [illegible] & bonorum ſecuritatem [illegible] *Executioni fieri debet* [u] * locò conſuetò *in conſpectu* [w] totius populi propter finem, * tempore juſto, ſc. non feriatò die. [illegible] *C. de feriis*, & ſententiæ conceptæ publicatio & executio differenda non eſt, propter [illegible] *C. de* [illegible] [illegible] *C. de* [illegible] *Vid.* [illegible]

*benef. lib.* 2. c. 5. Differtur tamen pœna, (1) ſi alterius *gravioris criminis* (4) accuſatio & inquiſitio ſuperſit: *Tond. D.* [illegible] *ib.* 5. *F.* (2.) propter reorum potentium, & tumultum qui *timetur.* [illegible] *Cl.* q. 137. n. 12. (3) ſi teſtes, ex quorum depoſitione reus eſt condemnatus, criminis falſi accuſati fuerint, *Tond. d. l.* (4.) ad ſocios criminis *indagandos* [illegible] 29. n. (5) ſi reus condemnatus aliorum adminiſtrator fuerit tum breve tempus conceditur ad rationes reddendas [illegible] *C. de bon. proſcrip.* (6) ſi Princeps juſſerit reum majori, quam conſueta pœna afficere tum etiam exſpectantur XXX. *dies* [illegible] 20. C. (7) in muliere prægnante, donec enixa fuerit: [illegible] (8.) Corpora afflictiva propter morbum rei condemnati, [illegible] *ad SCt. Silan.* capitalis autem in eo ſtatim executioni mandatur [illegible] *Cl.* q. 137. n. 34. nam quando decernatur pœna ultimi ſupplicii, tum ea reo eſt denuncianda triduum ante executionem, *art.* 79. eique e carcere in aliud [illegible] educto, miniſter Eccleſiæ *adjungatur,* [illegible] *art.* 79. 102. cibique lautiores offerantur, *Pro* [illegible] ne tamen inebrietur *art.* 79. quod ſi pœnitere nolit, executio aliquantulum differenda, [illegible] diligenter admonendus eſt, quod ſi nihil operetur [illegible] relinquatur, & ſententia detur executioni, *Cl.* q. 137. n. 47. Si forte carnifex in executione peccaverit, lapidibus obruendus non eſt, *art.* 97. ſed ſi quidem lata culpa peccavit, punitur à magiſtratu, *Cl.* q. 137. n. [illegible]

*Impediunt* [illegible] pœnam (1.) Mors rei, 6. *de publ. jud.* [illegible] *ad SCt. Turp.* 26. h. animadvertitur tamen in cadaver, ſi de *atrociſſimo* [illegible] delicto fuerit convictus aut convictus. *Vid. Cl.* [illegible] q. 131. n. [illegible] *Hog.* q. 37. n. 32. (2.) Præſcriptio *Vid. tit. de div. temp. præſcrip.* (3.) Aggratiatio, quando ſcil. Princeps ex gratia pœnam remittit. [illegible] Mitigantur pœnæ ob certas cauſas à Principe, ob alias à Judice, ob alias ab ipſa Lege. [illegible] *Tiraq. de pœn. temper. Farin.* [illegible] *Cl.* q. 141 [illegible] *&c.*

## Notæ variorum.

(1) [*Ab heredibus*] Quæ debuerunt ex contractu. Contractum vero omnem etiam ex [illegible] [illegible] *C. de contrah.* [illegible] *Contrahentes,* quo [illegible] [illegible] ab heredibus [illegible] *l.* 47. *ff. de* [illegible] quod in pœna [illegible] *Lauter* [illegible]

Claudio puniendo, ſolum verum ſolvendo.

(2) (*Locum eſſ*) Hæc pœnam [illegible] tanta, quam [illegible] [illegible] [illegible] *l. Papinianus* [illegible] 24. *ff. de* [illegible]

Qui maleficium commiſit, commendandus eſt.

(3.) [*Naturalem*] Verum ſupplicium [illegible] [illegible] *ff.* [illegible] [illegible] *ff.* [illegible]

(4) [*Vindex dominus ad nocentem*] [illegible] *Carpzovius* [illegible] [illegible] [illegible] *Theodor* [illegible] *c.* 10.

[illegible] 2. n. 22. [illegible] *Carpzov.* [illegible] *Tract*

(5) [*Tantum venalis*] [illegible] [illegible] [illegible] *Carpz. Pr. Crim.* qu. 150. [illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

# TITULUS XX.

## De bonis Damnatorum.

*Jung. L. 9. C. tit. 49.*

Jure * antiquo capitali poenae jungebatur confiſcatio bonorum, ſcil. propter ſententiam condemnatoriam, quae hoc continebat expreſſe, ut in ſtupro inceſtu § 4. *I. de publ. jud. N.* [illegible] vel tacite, ut in omnibus poenis capitalibus, *l.* [illegible] *qui teſt. fac.* Bona reorum propria, quae ad extraneos heredes tranſire poſſunt

ſunt. NON etiam (1.) bona uxoris, & quæ ea [illegible] ante crimen ab illo accepit: 4. pr. & §. 1. C. de bon. proſcript. (2.) ſervi condemnati peculium: 1. C. de bon. proſcript. (3.) filii condemnati peculium *profectitium*, etiam caſtrenſe & quaſi, quæ patri relinquuntur: 3. C. d. t. nam ſeparatio peculiorum facta eſt in favorem filii, qui hæc ceſſat. *Vid. Matth. de pœn. c. 2. n. 7. 8.* (*an etiam poſt* N. 118. c. 1. 2. junct. *N. 134. c. 5. Vid. Matt. ibid.*) (4.) bona *feudalia*: *Habn. ad W. h.* (5) fideicommiſſo ſubjecta. *Habn. h.* (6.) aliis ex contractibus debita: 2. C. de re publ. (7) quæ reus poſt condemnationem ex nova cauſa acquiſiverit, de quibus tantum diſponit inter vivos, 11. §. 5. [illegible] nam ſi per condemnationem deſiit eſſe civis, amittit jus teſtandi, nec habet heredes, ſed fiſco bona vindicantur, 2. C. de bon. proſcript.

* Jure Novo confiſcatio non cohæret tacitè delictis capitalibus deſcendentibus & *aſcendentibus* usque ad III. gradum, ſolò Majeſtatis crimine excepto. *N. 134. c. 5.* ſic etiam uxori rei indotatæ quarta bonorum pars *relinquenda* eſt, *N. 134. c. 5. Vid. Matth. de pœn. c. 2.* Si verò tanquam pœna principalis expreſsè adjicitur ſententiæ tum res expedita eſt, *arg. N. 134. in aut. [illegible] Theod. D. [illegible] Heig. p. 2. q. 33. n. 15.* (*Diſſ. Mich. Ca. q. 133. n. 15.*) §

## *Notæ variorum.*

(1) [*Jure novo*] Capitaliter damnati olim [illegible] vel *ferro pœna*, vel [illegible], utroque caſu ſequebatur confiſcatio bonorum propriorum, [illegible] bona, quæ [illegible] vel [illegible] conſiſcari [illegible]. Quamvis autem [illegible] pœna per *Nov.* 22. c. 8. ſublata ſit [illegible] *Nov.* 134. c. [illegible]

(2) [*Damnatus* [illegible]] [illegible] *de donat. [illegible]*

(3) [*Profectitium*] [illegible]

(4) [*An etiam poſt Nov.*] [illegible] *arg. l. 24. ff. de LL.* [illegible]

[illegible]

(5) [*Feudalia*] [illegible]

(6) [*Et aſcendentibus*] [illegible]

[illegible] Item (1.) [illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible] ſententia condemnationis verbis expreſſa pœnam confiſcationis, inferre poſſe puto, cum *Myler de ſtat. Imp. part. 2. c. 63. n. 14. Reſcreib. de feud. l. 5 concl. 62. n. 5. ubi profeſſ.* [illegible] V. gr. Si integro ſubjecerit heredem, cum non [illegible] hodie [illegible] *Auctor*, quæ ſententia etiam facile defendi poteſt. Interim ſententia diſſentientis *Carpz. crim. d. l. 3.* hæreditatem eorum heredibus ab intestato adjudicantis, non iniqua eſt. Hinc, ſi ubi ſunt probatus, non temerè admittitur. *Tiraq.*

# *TITULUS XXI.*

# De bonis Eorum, qui ante Sententiam vel mortem ſibi conſciverunt, vel Accuſatorem corruperunt.

*Junge l. 9. C. t. 50.*

A Confiſcantur [1] etiam bona reorum, qui (per deprehenſionem, vel accuſationem, vel poſtulationem,) conſtituti in reatu capitali, *3. pr. §. 1. 2. 3. h. 45. §. 1. de jur. fiſc.* * ipſimet ſibi mortem conſciverunt, *3. h.* (*quod probandum*) [2] *conſcientia criminis*, [3] *aut metu futuræ pœnæ*: [4] *3. h. v. 3. §. 1. ff. 1. C. h. L. 45. §. 2. de jur. fiſc.* neque horum teſtamenta valent: *2. C. qui teſt. fac. poſſ. 6.*

B *§. 7. de injuſt. rupt. &c.* * corruptò adverſariò diem ſuum obierunt: *rubric. h.* niſi ita ſeſe liberarint à *capitali pœna*: [5] *l. h. 18. C. de tranſact.* Hodiè hoc procedit in delictis, in quibus condemnatorum bona confiſcantur, ut crim. majeſt. &c. *alias non* [6] *aut. 151.*

## *Notæ variorum.*

(1) [*Confiſcantur*] Cum *confeſſus aut convictus pro condemnato habeatur*, hujus verò bona confiſcentur, [illegible] & illorum bona quoque fiſco adjudicanda fuerunt. Sed cum hodie pœna ceſſet, hanc confiſcationem quoque deficere, *Auctor admonet.* Imò pœna mortis [illegible], & teſtamenta eorum, qui mortem ſibi conſciverunt, vel corrupto adverſario, mortui ſunt, valebunt, & ita, [illegible] voluntate expreſſa, heredes ab intestato ſuccedent. *Tiraq.*

(2) [*Quod probandum*] Hinc, ſi in carcere mortuus deprehenderetur, non præſumitur ſibi mortem conſciviſſe, ſed eum naturaliter mortuum fuiſſe, præcipuè ſi manifeſta ſigna non adſint. Sicut & in dubio ille, qui extra carcerem ſibi mortem inferret, magis ex melancholia, quam ex propoſito, ſe interemiſſe præſumeretur. Omnis enim præſumtio in dubio eſt delicto excluſiva. *Struv.*

(3) [*Conſcientia criminis*] Aliud, ſi ex melancholia, vel morbo [illegible] ſuſtulit [illegible]. *Struv.*

(4) [*Metu futuræ pœnæ*] Quod ſi etiam inſtante inquiſitione, quis ſe ipſum occidat, ut corpus ejus [illegible] non ſolet, ſepultura tamen honeſta ipſi denegatur, ejusque cadaver per fenestras ejicitur, vel ſub domus limine excavatum à carnifice vel in loco cadaveribus ſuſpenſorum deſtinato, vel ſub patibulo ſepelitur *Carpz. qu. 2. n. 30.* Malè tamen hæc carnifices omnes eo in loco, ubi propter delictum commiſſum, quæ ſibi ſtatutæ [illegible] cadaver [illegible], [illegible] in circumferentiam gladio tangere [illegible], ſibi aut heredum aliquod acerbiſſimum vindicent. Cum igitur conſuetudo hæc ſit irrationabilis, [illegible] hoc nequaquam concedendum. *Carpz. d. l. n. 32. Struv.*

(5) [*Capitali pœna*] Nam [illegible] eſt [illegible] qui longiorem ſortem qualiter qualiter redemptam valeat *l. 1. ff. h. t. Struv.*

(6) [*Alias non*] Niſi in caſu, ubi deficiunt cognati in tertio gradu. Ergò, ex quacunque cauſa bona delinquentis ordinariè non confiſcantur, in illo non confiſcentur ob ἀντιχρησιν. Sed quid ſi ob magnam [illegible] referunt hanc ad crimen Læſæ majeſtatis Divinæ, pœnæ tamen confiſcationis uſu recepta non eſt. *Struv.* Hodiè pœna proprietatis vetita eſt, nam inchoatam aut conſummatam deliquit v. gr. ob avaritiam, bonorum [illegible] pedetentim ære ſolent &c. Ipſo tamen graviore, [illegible], [illegible] homicidium

ditum imperfectum. [illegible] Carpz. Pr. Crim. quæſt. [illegible] n. 44. Sed [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] Carpz. Pr. crim. qu. 131 n. 48. [illegible]

# TITULUS XXII.

## De Interdict. Relegat. Deportat.

D Interdictus (1) eſt, cui certus locus, vel aliud quid interdictum eſt, e. g. officia, &c. 7. pr. §. 3. L. 2. h.

D RELEGATUS eſt, qui certo ex loco excluditur, vel ad certum locum relegatur, ſalvâ civitate: 7. pr. §. 1. h. 17. §. 1. de pœn. quod ultimum dicitur hodie confinare. [illegible] interdum etiam relegati condemnantur in ædes ſuas [illegible] in das Haus ſchweren. 6. ff. h. Relegatio fit, vel ex certo loco, vel ad certum locum [illegible] de D. hic Relegans debet in loco, ex quo vel ad quem relegatio fit, Juriſdictionem habere criminalem. [illegible] Rich. 2. dec. 93. n. 11. per L. 7. § 1. & 11. h. Carpz. p. 4. c. 47. d. [illegible] Temporalis, quæ ultra X. ann. non extenditur, L. 7. § 2. h. [illegible] 23. d. pœn. Carpz. qu. 130. n. 17. Perpetua, quæ etiam tacita cenſetur, ſi ſimpliciter quis relegatus fit, e. g. daß er des Landes hiemit verwieſen [illegible] 10. C. d. pœn. Vid. 23. [illegible] Si tempora tacita quidem mentio, ſed indeterminata, tum ad X. ann. extenditur, e. g. daß Beklagter auf eine Zeitlang verwieſen [illegible] de pœn. [illegible] Ca. q. 130. n. 17. [illegible] Rich. q. 3. n. 7. Publica, quando quis per Lictorem educitur; (4) Privata, quæ privatim fit. Hodie relegati præſtant urphedam, (5) ad quod nolentes, carcere compelluntur, (6) pane & aqua cibandi, Ca. q. 130. n. 38. & quomodo egreſſus ſententiam puniatur, (7) docet Mevius ad Jus Lub. [illegible] Rich. p. 2. dec. 93. n. 24. Ca. [illegible] 47. d. [illegible] Non amittunt Civitatem, (8) 17 §. 1. de pœn. [illegible] Stam. de ſerv. perſon. [illegible] Ca. p. 4. c. 47. d. [illegible] q. 130. n. 52. Rich. 2. dec. 93. n. 52. nec bona, (niſi in perpetua relegatione hoc ſit expreſſe additum. 4. ff. h. & C. d. pœn. contra §.) nec famam, Vid. tamen 22. de his, qui not. infam. niſi relegatus ſit propter delictum famoſum: Vid. Rich. 2. dec. 93. & Ca. [illegible] 47. d. 11. 12. Tempore relegationis elapſo libere redit: Rich. 2. dec. 93. in perpetuum relegatus, alibi mortuus, non poteſt domi ſepeliri: [illegible] 2. de cadaver. pun. Relegatum etiam ſequitur uxor, (9) niſi ſit vagabundus: Ca. [illegible] 47 d. 7. & q. 130. n. [illegible]

D
C
Lo DEPORTATUS eſt, qui vinctus in certum locum fertur, ut amiſſâ civitate ibi perpetuo maneat, 17 §. 1. de pœn. 7. §. 2. h. Præſides olim deportare non poterant, niſi ſpeciali Principis permiſſu. 6. §. 1. h. Hodie deportationis nullus uſus: (10) ejus [illegible] hodie uſitata. Vid. apud Stam. de ſerv. perſon. [illegible]

### Notæ variorum.

Interdictum [illegible]

(1) [Interdictus] Alia ratio eſt Interdicti [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] lib. 3. cap. [illegible] Ab hoc interdicto vero differt [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]

relegatum conſerve, adeoque generalem Urphedam præſtare jubetur. *p. 4 C. El 47 ¼ 1. 2* Quod regulariter alias non obtinet *l. 7 § 15 ff. h. t. Sibon d. 3.* Nam ultra terminos Jurisdictionis poteſtas relegantis non extenditur *l. 7 § 6. ff. h. t.* adeo ut *L.* ut hac relegatione *diverſa eſt relegatio ex loco eadem jurisdictioni ſubjecto*, die Verbietung der Gerichte / *Berlich Dec 93 n. 9.* Item *aversione vendendo* & emigratio ex civitate, vel loco die Stadt oder Gerichts Räumung / vel etiam ſubditis ex juſta cauſa à Magiſtratu injungitur, ut bona quæ habent immobilia ſub ſua jurisdictione ſita vendant & emigrent. Hæc propter poenam etiam transferendi jurisdictionem Jurisdictionem judicis competentis exempta & ad incompetentem judicem translata cum deprehensa eſt graviſſima maleficia ſingulariter alias interdictum, obtinet tamen *P 2 C. El §. Mevius.* Tres poenæ, quæ hic recenſentur à lege poſitiva dependent, earumque uſus & effectus adeo ex legibus *Germaniæ*, quam *Romanis* abundanter eſt, uſum tamen ſubſidiarium hic non negabis. *Titius.* Interdicti ſunt ii, quibus urbe, patria, Relegatione, uſu, honore, ordine, negotiatione aut Advocatione ad tempus, vel in perpetuum interdictum eſt *l. 1. § pen. l. 9 h. t.* Relegatus eſt, quem is, qui jus *relegandi* habet ad tempus, vel in perpetuum relegandum pronunciavit *l. 13. & 14. h.* Deportatus eſt, quem is, qui jus *deportandi* habet in exilium deportandum ſententia ſua pronunciavit *l. 6. 7 § 1. l. 19. h. t.*

(2) [*Confinatio*] Germanice Bannung im Zuchthaus / de qua vide *Confinat. Criminal. art. 181. Dusinav. de Confinat.* Exemplum eſt *1 Reg. 2 verſ 36 Brunn.*

(3) [*Conventione*] Conſuetudine tamen non multorum locorum obtinuit, quod etiam ex aliis locis in illa Provincia ſive ſimul relegatus confinetur. *Mev. Decis. Palatin. ... Brunn.*

(4) [*Adeuntur*] Sed hæc ſubtilitas ceſſat, nec facile decernitur, niſi ob delictum famoſum. *Brunn.*

(5) [*Urphedam*] Vocatur hoc juramentum de *non vindicando carcere*, & de *non redeundo*, in Provinciam ante tempus præfinitum. Sed ſi neque vel nolit proceſſere contra ipſum judicem in relegando & poſtea ad hoc juramentum adegerit, obtinet relegatus ſolet Principem vel Imperatorem ad relaxandum Urphedam quoad effectum agendi. *Brunn.* Urphede.

(6) [*Comprehenditur*] Quod ſi non jurare velint per *mandatum judicatum*, aut in quibusdam locis *Carnifices* in ipſum delinquentem etiam juramentum hoc præſtari ſolet. Ut juramentum in alterum etiam effectum habeat, requiritur alias, ut principale mandatum procedat. Sed hoc caſu *ſolum* judex curaſſet hoc mandatum, conſentit *ſolum* partes, deinde ſufficit, quod ipſi ſi relegando ſimul expromittit ipſi reverendi, eandem poenam committere, quam ſi ipſe juraſſet. *Brunn.* Si delinquens juramentum præſtare nolit, an ipſum carnifex hoc præſtare ſolet.

(7) [*Puniatur*] Scilicet, primò fuſtigatione, deinde digitorum amputatione, demum & poena gladii. In Praxi ob circumſtantias ſubinde ſolet condemnatio ad opera perpetua. *Brunn.*

(8) [*Cruentatio*] Unde jure Civitatis per *Procuratorem* expediri poſſunt, & ſolum jus aliquibus commercii amittunt. *Brunn.*

(9) [*Donec ſuperſunt*] Niſi conſenſu *Principis. Brunn.*

(10) [*Liber*] Ità tamen, ut inde redemti liberum ſolve manent. Quo de rebus commercii præſens diſponere poſſit. Aliud in uxore, quæ ſua interceſſione maritum adulterum à gladio liberat. Non relegatum ſequi tenetur, nec cogi poteſt, quia quaſi poenam ſe reddit delicti immeritam. *Brunn.*

(11) [*Mediæ ipſa*] In *Germania* enim *Imperator Inſulas* deſtinantur. In *Belgio* tamen, *Anglia & Gallia* parva hoc frequentiſſimum, ubi transportantur delinquentes in *Americam. Brunn.*

(12) [*Cognata*] Vel per poena bannum vel *fuſtigatione*, cum perpetua relegatione. *Brunn.*

# TITULUS XXIII.

## De Sententiam paſſis & reſtitutis.

*Junge l. 9. C. t. 51.*

A Reſtitutio (a) hic eſt reorum punitorum in priſtinum ſtatum à Principe facta reductio. Eſt vel (b) Juſtitiæ, quando ſcilicet reus probat innocentiam ſuam: *1. §. ff. de quæſt.* D

(b) Gratiæ, quando ex D

clu-

clementia principis reſtituitur: hæc eſt vel, * plena, (2) quando quis per omnia, & in totum reſtituitur in priſtinum ſtatum. 1. ſ. h. §. 1. in f. l. quib. mod. pat. poteſt ſolv. * minus plena, qua pœna tantum remittitur, ſed honores &c. non reſtituuntur, (3) 2. & 1. C. h. Reſtituit Princeps, 1. §. f. in f. d. quæſt. 4. de pæn. & qui habent Jus territoriale: v. Cn. 4. ſ. propter numerum liberorum, (4) 7 § 3 de bon. damn. &c. vid. Clem. 1. de celebrat. miſſ. Cn. q. 151. n. 40. &c. * Minus plena reſtituit, quantum expreſſis verbis in ipſa conſtitutione expreſſum eſt: 2. 4. 6. 7 C. h. * Plena reſtituit omnia priſtina jura, 1. ſ. C. h. non tamen fructus medii temporis, (5) Barb. V. 1. D. 31. th. 7. lit. c. nec bona interim à fiſco alienata, (6) 2. §. 10. & §. 11, ne quid in loc. publ. Clarus lib. 5. ſent. §. f. q. 59. n. 6. & Gail. de P. P. lib. 1. c. 19. n. 20. 21.

* Reſtitutio juſtitiæ pleniſſima eſt, reo omnia reſtituit, (7) etiam bona alienata, fructus; & omnia adempta: (8) Barb. V. 1. D. 31. th. 7. lit. c.

## Notæ variorum.

Reſtitutio gratiæ, ex clementia principis dependet.

(1) [Reſtitutio] Quemadmodum [illegible] civili [illegible] communis eſt, [illegible] reſtitutionem [illegible], [illegible], ſed [illegible] reſtitutio [illegible] dependet. In quantum [illegible] reſtituitur, id à voluntate Principis dependet, quæ [illegible] interpretatione [illegible] debet, quæ [illegible], non [illegible] Titius. [illegible] ſupra lib. 4. tit. 1. explicata eſt. In præſenti [illegible] quod quando Princeps [illegible] condemnatum [illegible] in priſtina jura, dignitatem & honores non reſtituit, ea reſtitutio [illegible] plena [illegible]; quando vero [illegible] Reum, plena [illegible], v. Lauterbach compend. juris h. t. Plena [illegible] non [illegible], ſed [illegible] plena [illegible]. [illegible] h. tit. 3.

(2) [Plena] Unde [illegible] ſalvo [illegible]. Brunn. cent. 3. d. 74. [illegible].

(3) [Non reſtituuntur] [illegible] nihil aliud [illegible], quam [illegible] in civitate. Conſ. [illegible] 7. c. 3. §. 25 & 30. [illegible].

(4) [Liberorum] [illegible], quam [illegible]. [illegible] tamen [illegible] Principem [illegible], ſed non [illegible]. De [illegible] non [illegible]: [illegible] ſolidum [illegible], [illegible] Principi [illegible]. [illegible] tamen bona [illegible] delicto [illegible], [illegible] pœna non eſt [illegible]. [illegible].

(5) [Fructus medii temporis] [illegible] non habet, [illegible], & [illegible] Princeps recipiat, fructus [illegible] non [illegible]. [illegible].

(6) [Alienata] [illegible] l. 2. quia beneficia Principum [illegible] ſunt ſalvo jure tertii. [illegible]. [illegible] Princeps [illegible], cum [illegible] eſt [illegible] in locum [illegible], arg. l. 13 ff quod met. cauſ. [illegible] defendit. [illegible] de jur. Majeſt. l. 1. c. 9. th. 4. [illegible] Marth. de crim. l. 48. t. 19. c. 5. n. 10. Neque tamen [illegible] per [illegible], [illegible] l. ſ. §. 1. C. h. [illegible].

Beneficium Principum, ſalvo jure tertii, accipienda ſunt.

(7) [Omnia reſtituit] [illegible] nulla [illegible], [illegible] non [illegible]. [illegible].

Reſtitutio Juſtitiæ, [illegible].

(8) [Omnia adempta] [illegible] pœnam [illegible], [illegible] fuiſſe [illegible]. [illegible].

# TITVLVS XXIV.

## De Cadaveribus punitorum.

Corpora hominum ſepelienda: (1) l. 7. h. Deut. 21. interdum tamen (2) hoc non fit, propter atrocitatem (3) delicti, ut ſup. ad tit. de Pæn. &c. vid. art. 159. 162. vid. Joſua c. 10. & lib. 4. Reg. c. 9. [illegible]: Anatomicis (4) etiam tradi ſolent à Principe, Cn. q. 157. n. 72. ſeq.

Notæ

## *Notæ variorum.*

Homines mortui ex jure ſocialitatis ſepeliendi.

(1) [*Sepeliendis*] Homines mortuos ex lege ſocialitatis ſepeliendos eſſe, jam admonui, ſunt autem erga delinquentes vivos ſocialitas eatenus modo ceſſat, ut pœnam illi quærant, ità quoque erga mortuos omitti illa poteſt, hinc cadavera eorum inſepulta relinqui poſſunt. *Titius.*

(2) [*Interdum tamen*] In quibus caſibus ſepultura deneganda, nempe quando in cadavera punitorum animadvertunt leges, vide *Carpz. Pr. Crim. quæſt. 132. n. 34. ſeqq.* item *quæſt. 137. n. 69. ſeqq. Stryk.*

(3) [*Propter atrocitatem*] Quodſi hæc ratio vera, quomodo applicabitur *furi*, qui ſine dubio minus delinquit, quam *homicida*, & tamen hic ſepelitur, ille non? imò alios fures terrere poteſt patibulum, ſed quod terreat homicidas nullum ſignum remanet. *Stryk.* Hæc non eſt unica cauſa, quare delinquentium cadavera inſepulta relinquantur, ſed imprimis hoc permovet *delictorum frequentia.* Hinc fures patibulo affiguntur, ſed homicidæ, qui alios contra leges & jura, occiderunt, ſepeliuntur, licet homicidium furto ſit gravius, quia ſcilicet illud tam frequenter non fit, quam hoc. Sic qui duello inter ſe concurrerunt, licet ſe ne quidem vulneraverint, tamen & ultimo ſupplicio puniri, &, ob eandem rationem, cadavera inſepulta relinqui ſolent. *Titius.*

(4) [*Anatomiæ*] De quo vide *Huber. ad Weſenb. h. t. verb. ad Anatomiam. Carpzov. qu. 137. n. 72. vid. ſupra not. tit. de ſepulch. violato verb. ſtudioſi Medicinæ n. 6. Brunnem. Pr. c. 16. n. 32. Stryk.* Sepultura non tantum ob atrocitatem Criminum, ſed etiam communem favorem ſaluteṁque Reipublicæ per illum uſum promovendam arg. *l. 33. de aſſur.* junge *l. un. §. 14. C. de caduc. tollend.* Nihilominus *adhibendum eſt diſcretum judicis arbitrium* ex circumſtantiis conditionis perſonæ, *familiæ aliisque dependens utiliſque agit ipſe, ſi de ea Principem conſulat Carpzov. Pr. Crim. qu. 137. n. 74.* Imprimis utrum juſtum eſt, Profeſſores Chirurgiæ deſiderium, qui cadaver expetit, ut demandatæ unum ad minimum cadaveris ſectionem publicè in Der ordnung bey der Univerſitäten von der Facultät der Artzney §. ſonderlich *Conſtitutione 5. p. 422.* ſatisfacere queat. *Mevius.* Non verò à Magiſtratu inferiori. Hujus enim eſt, ſententiam latam ſimpliciter executioni mandare, adeoque vel cadavera ſepelire, vel in loco ſupplicii relinquere. Coriarios quoque ad contaminationem cordi hominis teneri, ac unde nullam ipſis metuendam eſſe infamiam, rectè quoque dicitur à *Carpzov. d. qu. 137. in fin.* Ratio tamen, quibus Coriariorum dubio eadem occurrunt, ſatis rectè ſe non habet. *Titius.*

# LIBER XLIX.

# *TITULUS I.*

# De Appellat. & Relationibus.

*Junge l. 7. C. 1. 61. 62.*

APPELLATIO hîc eſt legitima ſuperioris judicis invocatio, adverſus gravamen inferioris. Ordinarium eſt remedium, hinc excludit *extraordinaria*, (1) niſi quatenus ſunt breviora, aut pinguiora, *vid. Bach. V. 1. D. 11. th. 1. A.* Eſt vel judicialis *c. 5. X. h.* quæ à Sententia Judicis interponitur: *Extrajudicialis*, (2) quæ à decreto vel aliis actibus extrajudicialibus, *c. 1. de appell. in 6. 1. §. 3. quando appell.* 21. §. *1. h.* ut à captura, *incarceratione*, (3) *Pap. decif. 296. per tot. Weſenb. h. 5. &c.* Origine *Juris Naturæ*, informatione Juris Civilis, *Beſold. de appell. Bach. V. 2. D. 33. th. 1. A. vid. Myſ. cent. 1. O. 1. 14. Ord. Cam. p. 2. t. 28. §.* Und dieweil/ 36. *Gail. 1. O. 124.* (1.) D N † D D C

Appellant (1.) omnes damnati ſive gravati, *l. pr. ff. 30. C. h.* ita, ut unius appellatio profit, (non contra etiam *unus condemnatio*: (1) *3. §. 2. h.*) omnibus conſortibus: *l. 2. C. ſi unus ex pluribus* 10. *h. 1. C. de diverſ. reſc. nige. C. c. 1. t. 20. d. 15. & p. 2. c. p. d. 4.* S

[illegible] (III) Propter arctissimam cognationem, Pater condemnato filio, [illegible] filius patre condemnato [illegible] Procuratores [illegible] appellare potest [illegible] Non [illegible] alios judicium propter [illegible] proprio judice condemnato [illegible] condemnatum [illegible] causa tributorum, & debitorum [illegible]

Subjecti [illegible] omnes magistratus vel judices, [non etiam arbitri [illegible] compromissarii, [illegible]] Inferiores, ordinarii sive delegati, [illegible] non etiam illi, qui superiorem non agnoscunt, [illegible] ut Imperator, [illegible] provocatio ab Imperatore male informato, ad eundem bene informandum [illegible] speciale [illegible] procuratores [illegible] Senatus [illegible] Judices a [illegible] principe [illegible] In Gallia Parlamenta, in Italia [illegible] in Hispania Cancelleria, [illegible] in Germania [illegible] privilegium [illegible] Saxoniae, Brandeburgicus, & [illegible] Bohemiae, [illegible] ) In aliis confirmationibus [illegible] Saxonia [illegible] de anno 1559. Brandenburgi. [illegible]

c. 9. *All.* 9. vid. omnino Ca. 3. *Resp.* 125. per tot. Archiduces Austriæ, Duces Lotharingiæ: *Mich. de jurisd. Imp.* [illegible] 3. O. 33. Wurtenbergiæ, vid. omnino *I. P. W.* p. 1. c. 6. §. Wo aber ein Frembder [illegible] vid. *Besor.* [illegible] & alios Scriptores [illegible]. Hoc tamen privilegium locum non habet in casu denegatæ aut protractæ justitiæ, *A. R.* c. 11. vers. Auf den Fall aber. *Arum. ad A. R.* disc. 5. t. 16. concl. 18. quod ipso documento denegatæ justitiæ est probandum, *Ord. Cam. fol.* 114. vid. *Gail.* [illegible] 2. O. 24. n. 5. *Mynf.* 2. O. 4.

a. * ad quod sunt personæ superiores. l. §. 3. & 4. de his, qui *arbitr.* [illegible] §. 4. ad SC. *Trebel.* vid. *Hahn.* [illegible] immediate, [illegible] C. de [illegible] omnino vid. c. 66. & *Ord. Cam.* p. 2. t. 29. (si per saltum [illegible] fuerit facta, remittitur ad intermedium, l. §. 3. sic a judice delegato appellatur ad delegantem [illegible] l. pr. quis & a quo non etiam à mandatario ad mandantem, [illegible] sed ad ejus proximè superiorem: l. §. 1. quis & à quo appel. hodiè à Commissariis appellatur ad principalem constituentem vid. *Gail.* 1. O. 25. per tot. Ca. 3. *Resp.* 124.) nisi intermedius judex sit suspectus, [illegible] vel inhabilis: *Ord. Cam.* p. 2. t. [illegible] *Gail.* 1. O. 119. n. 2. Jure Can. *Romam ad Papam* [illegible] appellatur, *Con. Metropolitanum* q. 7. c. 7. & 38. n. [illegible]

b. Appellatur a * Sententia, [illegible] (non citatione, [illegible] 7. C. quorum appel. non recipiuntur Ca. 3. *Resp.* 127. n. 4. nec ab executione, [illegible] pr. §. [illegible] C. [illegible] C. quorum appel. non recipiuntur *Gail.* 1. O. 113. Ca. 3. *Resp.* 127. [illegible] nisi executor modum [illegible] executionis excedat, [illegible] 3. *Mynf.* 3. O. 24.) judicii validæ, [illegible] §. [illegible] quæ sent. sine appel. & [illegible] C. quando provoc. non est necess. definitiva, [illegible] C. de *Episc.* audient. 7. C. quor. non appel. non recipiuntur. Ca. 3. *Resp.* 127. n. 1. & interlocutoria gravamen irreparabile continente, sive [illegible]

c. * simplex, quæ causam principalem, neque per indirectum spectat, nec est de dando vel faciendo, sed tamen continet damnum, quod per sententiam definitivam reparari non potest, [illegible] e. g. in l. 9. de his, qui *sentent.* [illegible] Ca. 3. *Resp.* [illegible] l. 7. §. [illegible] de appel. recip. *Besor.* [illegible] D. [illegible] 24.

c. * mixta, quæ per indirectum tangit causam principalem, definiendo articulum, qui ad definitivam spectat, vid. *Besor.* [illegible] *Diss.* [illegible] & c. Carpz. 3. *Resp.* [illegible] *Gail.* 1. O. [illegible] *Ord. Cam.* p. 2. t. 28. §. [illegible] & c. 20. §. Jure Can. [illegible] ab omni gravamine potest appellari [illegible]

D. Ca. 3. *Resp.* 127. n. 2. §. licet lata sint * in causis criminalibus, [illegible] C. [illegible] C. de *Episc.* aud. Ca. q. [illegible] (*Obs.* [illegible]) *Jul. Clar.* [illegible] §. f. *Damhoud.* prax. *Crim.* c. 11. n. [illegible] & c. 140. n. [illegible] quod tamen in Camera [illegible] non observatur, (etiam quoad [illegible] Patronat. Decimarum &c. *Gail.* 1. O. 112. n. f. *Mynf.* 1. O. 10. *Gail.* 1. O. [illegible]) *Ord. Cam.* p. 2. t. 28. §. Item nachdem auch *R. I. de anno* 1594. vers. Item als jetzt etliche Zeit hero, quæ consuetudo [illegible] ad inferiora judicia non est extendenda. *Carlowitz.* lib. 1. *Resp.* [illegible] *Rauchbar* p. [illegible] *Nobilium* decis. [illegible] (*Dif. Gail.* 1. O. [illegible] *Mynf.* [illegible] O. [illegible]) In Saxonia tamen, Wurtenbergia &c. non recipiuntur appellationes in Criminalibus, Carpz. [illegible] & 3. *Resp.* 128. & q. 139. *I. P. W.* p. [illegible] §. Von Malefiz Sachen. Sed his in locis, locò appellationis est defensio, [illegible] etiam post sententiam latam, quæ in causis criminalibus nunquam transit in rem judicatam: Ca. q. [illegible] sic in Camera hic admittitur querela [illegible] nullitatis, *Ord. Cam.* p. 2. t. 28. §. Item nachdem auch. vers. Doch so sich jemands.

d. * In rebus [illegible] ac. Cd. Hodie tamen [illegible] summa est tantùm appellabilis, ut in Camera 300. fl. *Recess.* deput. de anno 1600. § vid. *Ord. Cam.* p. 2. t. 28. §. Und sonderlich sehen [illegible] *R. J. de anno* 1570, vid. *R. J.* de A.

1654. §. Therdinter ſoll 112. fl. 40c. Reichs-Thaler. Capital. Aliis tamen Statibus per privilegium major ſumma [illegible] eſt conceſſa: v. Ord. Cam. p. 2. t. 28. §. Und ſonderlich in dieſe [illegible] hæc ſumma æſtimatione [illegible] actoris, arg. [illegible] de jureid. in dubio, juramento eſt declaranda, Ord. Cam. p. 2. tit. 28. § Und ſonderlich ſetzen an etiam [illegible] computentur, [illegible] vid. Gilmann. [illegible] p. 1. Vol. [illegible] Beſold. de appell. Gail. 1. O. [illegible] In rebus, quæ æſtimationem certam non recipiunt, ut ſervitutes, &c. [illegible] indiſtinctè appellatur, Ord. Cam. p. 2. t. 28. § Und ſonderlich ſetzen [illegible] Doch ſollen die Sachen [illegible] D 34. th. 27.) niſi in ſpecie excipiantur, ut (1.) ſententiæ latæ in judicio poſſeſſorio, [illegible] Bach. V. 2. D. 33. th. 3 E. F. G. per L. un. C. ſi de momentan. poſſ. Dec. Myſ. [illegible] & quidem hodie ſummario, [illegible] nam hodie e plenario [illegible] admittuntur: Ca. 3 Reſp. 13. 14. Gail. 1. O. 7 n. 7. & O. 147. [illegible] D. [illegible] (2) in cauſa, quæ [illegible] forma: [illegible] ſ. de appell. recip. (3) Sententia bis confirmata: L. un. C. ne lic. in una eademque cauſa, ſc. [illegible] v. Bach. V. 2. D. 33. th. [illegible] de ord. jud. [illegible] In Camera tamen tertiæ & quartæ appellationes recipiuntur, [illegible] Gail. 1. O. 72. [illegible]

à * Decreto & aliis actibus extrajudicialibus, [illegible] quando appell. L. [illegible] c. g. vocatione ad magiſtratum, ſi quis legitimam excuſationem habeat, [illegible] quand. appell. b.

ll. Forma eſt, [illegible] & quidem requiritur, appellationis * (1.) Legitima INTERPOSITIO ratione * temporis, quod olim erat biduum vel triduum, 2. §. 1. ſ. quando app. ſit. [illegible] quand. appell. Hodiè eſt indiſtinctè decendium: N. 23. c. 1. & Auth. [illegible] de appell. [illegible] Reſp. [illegible] quod eſt ratione * initii [illegible] 7. quand. appell. [illegible] C. de his, qui per metum jud. (Dec. [illegible] quando appell.) [illegible] C. de [illegible] & currit à die ſententiæ: N 23. c. 1. § 1. quando appell. modò ſciat condemnatus ſententiam eſſe in ſuum præjudicium latam: v. Gail. [illegible] 1. O. [illegible] Si per procuratorem actum, ſufficit procuratorem ſcire. [illegible] quand. appell. in ſ. * curſus continuum. [illegible] C. de ferri. Gail. 1. O. [illegible] & ultimâ horâ poteſt interponi, hinc & ſententiæ & appellationis inſinuatæ hora eſt adjicienda: Gail. d. l. Ca. [illegible] Reſp. [illegible] vid. Ord. Cam. p 2. t. 30. §. So ſollen auch die Appell. vid. Bach. V. 2. D. 33. th. [illegible] [illegible] F
G

* modò nam interponi debet modeſtè [illegible] contrafaciens fit infamis, 42. de injur. & extraordinariè punitur: [illegible] Et ſi appelletur à ſententia * definitiva, aut interlocutoria, definitivæ vim habente * ſtatim apud acta, [illegible] tum ſufficit vocabulum appello: [illegible] * ex intervallo, tum fieri debet in ſcriptis Ord. Cam. p. 2. t. 30. §. Und ſo von Beywurtheilen. (Dec. Bach. V. 2. D. 33. th. 7 F. G.) [illegible] L H I L
* Interlocutoria, tum fieri debet in ſcriptis, [illegible] Ord. Cam. p. 2. t. 30. §. Da aber von andern. Schedula appellationis continent nomen appellantis, [illegible] appellati, ſententiam à qua, [illegible] & in appellatione à ſententia interlocutoria vim definitivæ non habente, cauſam, propter quam gravatum ſe putet, Ord. Cam. p. 2. t. 30. §. Wo aber von andern. & [illegible] judex ad quem, neceſſariò exprimendus non eſt, ſed ſufficit dicere ad [illegible] competentem [illegible] v. [illegible] D. [illegible] Beſold. de appell. [illegible] Regulariter interponitur coram judice à quo, [illegible] quand. appell. arg. [illegible] Ca. [illegible] qui ſi ſui copiam non faciat, ſuperior ſtatim poteſt adiri: [illegible] quand. appell. M

ſi utriusque copiam habere poteſt, tum interponi poteſt coram [illegible], vel ſive notario cum teſtibus, [illegible] *Ord. Cam.* [illegible] Jn dem fall kan einem Notarien [illegible] tum conficiat Notarius desuper instrumentum, illique ſchedam appellationis verbotenus inſerat. [illegible] quod ſtatum habet vim devolutivam, licet non intimetur judici à quo, unde tamen eſt, ut ei intimetur, ad ſuſpendendam executionem, [illegible] *Ord. Cam.* [illegible] Jn dem fall einem jeden [illegible] So aber ſolch Appellant. [illegible]
[illegible] [a] Legitime APOSTOLORUM petitio. [illegible] qua appellatio habetur pro deſerta [illegible] Sunt autem Apoſtoli literæ, quibus caſus à judice à quo remittitur ad judicem ad quem [illegible] ſuntque ejus ſpecies hæ (1.) Dimiſſoriæ, quibus judex à quo, ſignificat judici ad quem, appellationem deferri [illegible] (2.) Reverentiales, quibus ſignificatur appellationi in honorem ſuperioris eſſe deferendum (3.) Refutatoriæ, quibus ſignificatur, appellationi nunquam [illegible] ne tamen partes comparerent, hæ refutatoriæ dicuntur [illegible] (4.) Reſt[illegible] (hi proprie non ſunt Apoſtoli) quibus Judex [illegible] gravamen [illegible] (5.) Teſtimoniales, [illegible] quibus ſignificatur appellationem eſſe interpoſitam: (6.) Conventionales, quibus ſignificatur, conſenſu partium eſſe appellatum. Hodie tantum ſunt [illegible] (1.) [illegible] & (3.) Petantur

K. [illegible] debite [illegible] h. poſt appellationem, vel in quâ actu appellationis

k. [illegible] legitimo tempore, h. e. intra 30. dies poſt latam ſententiam vel ſecundum [illegible]

L. [illegible]

l. [illegible] modo, h. e. inſtanter & ſæpius, [illegible] poſſunt tamen unô contextu ter peti inſtanter, inſtantius, inſtantiſſime [illegible] Hoc facto [illegible] dare tenetur [illegible] cum aliis primæ inſtantiæ. [illegible] Hodie loco Apoſtolorum ipſa acta primæ inſtantiæ dari debent: [illegible] In Camera ſtatutum eſt, Apoſtolos petere, [illegible] *Ord. Cam.* [illegible] (3.) [b] Legitima appellationis INTRODUCTIO, quæ eſt appellationis impetratæ legitima introductio, coram judice ad quem, intra legitimum tempus facta, cum petitione pro obtinendis proceſſibus, qui conſiſtunt in (1.) Citatione, [illegible] (2.) compulſorialibus, quæ ſunt mandata ſine clauſula, quibus judici à quo injungitur ſub pœna pecuniaria, ut intra certum tempus acta edat: [illegible] (3.) inhibitoriis, quæ ſunt mandata ſine clauſula, quibus prohibetur [illegible] judici aliquid attentare, appellatione interpoſita [illegible] DD. Tempus introducendi olim erat diverſum [illegible] hodie judicis eſt arbitrarium, [illegible] ut ſpatium VI. menſ. non excedat, *Ord. Cam.* [illegible] quod [illegible] definitur certo, tunc idem eſt VI. menſ. *Ord. Cam.* [illegible] Würde aber durch einen Richter [illegible] partes tamen petentes iſtud legitimum tempus prorogationem [illegible] impetrare poſſunt: *Ord. Cam.* [illegible] *Gail.* [illegible] Si tempore ſeriarum expiret hic terminus, tum in prima audientia poſt ſerias reproductio fieri poteſt [illegible] *Gail.* [illegible] Appellatio intra hoc tempus non introducta habetur pro deſerta, *Ord. Cam.* [illegible] Und ſo alſo [illegible] modo accedente judicis ſententia declaratoria, *Gail.* [illegible]

o. [illegible] (4.) Appellationis JUSTIFICATIO & proſecutio, [illegible] dum appellationis cognitum

 ad

ad finem perducitur gravaminibus coram judice ad quem deducendo * intra legitimum M
tempus annum, *Auth. Ei, qui appellat. C. de temp. & repar. appellat. Nov. 49. pr. c. cum ſit Romana. h. t.* propter juſtam cauſam alius annus conceditur à Lege, modo judicis ſententia declaratoria præceſſerit: *d. Auth.* hoc tempus currit à tempore interpoſitæ appellationis, *l. 5. C. de temp. appell. Cv. 1. c. 30. d. 10. Gail. 1. O. 141. n. 1.* pendente tamen perſecutione appellationis, ſi partes compromiſerint, durante illo *non currit annus* [90] vel biennium *Clem. Quamvis. eod. tit.* prorogari etiam poteſt expreſſo partium conſenſu *Clem. Quamvis. eod. tit. Gail. 1. O. 141. n. 5. 6.* Hoc juſtificationis tempus in Camera *non obſervatur,* [91] ſed certum interponendæ & introducendæ. *Gail. 1. O. 141. n. 9. Myns. 2. O. 68. Vid. Vult. de jud. 4. c. 2. n. 176. Cv. 1. c. 30. d. 10. 1. Ord. C. p. 3. t. 30. n. 2.* * legitimè modo, m.
& quidem * contumaciter abſente * appellato, Judex ſub extremum fatalem diem N
cauſâ cognitâ appellationis litem ſine ulla dilatione *deſinire debet,* [92] *N. 126. c. 2. verſ.* O
*ſin vero ſtatus ii & c. du Cv. ac. c. 18. & 70. §. f. h.* * appellante, judex, non expectato o
fine anni vel biennii *pronunciat.* [93] *N. 126. c. 2. verſ. ſi ſtatus ii c. 58. 70. & du Coſſer. h. Becor. d. t. D. 43. th. 115. & c. n. Cz. 3. Reſp. 120. 128.*

* comparentibus partibus appellationis forma- n.
lia ſunt juſtificanda, vel generaliter ad *acta ſe referendo* [95] vel ſpecialiter ſingulas formæ ſpecies nominando; Deinde obſervatur idem proceſſus, qui in primâ inſtantiâ. *Vult. de jud. lib. 4. c. 3. n. 141. e. g. Lis conteſtatur,* [96] *Ord. Cam. p. 3. 33. §. 2. 3. 4 & c.*

II *Appellatione * interpoſita* [97] * judex * ad quem, fit Judex. *Cz. 1. Reſp. 72. n. 13.* P
in cauſa, qua appellatum eſt, non etiam, ſi e. g. appellatum eſt ratione expenſarum, Q
ille cognoſcere poteſt de cauſa *principali,* [100] *ea. §. 1. de minor Cv. 1. c. 19. d. 9. n. 3. Cv. 2. c. 20. d. 12. vid. ac. de uſur. L. f. d. re jud. L. 20. h.* R

* à quo: nihil innovare poteſt, ſive appel- r.
latio recipiatur, *ſive non* [101] *an. pr. & t. t. appellat. interpoſ. nihil innov. deb.* ſi contra facit, committit *attentatum.* [102] *d. tit. Gail. 1. O. 144. Cv. 3. Reſp. 105. Lauterb. tr. de attentat. n. L. pen. ff. eum à quo appellat.*

* Cauſa principalis reducitur in eum ſtatum, in
quo fuit *tempore litis conteſtatæ,* [103] *arg. 15. C. de procurat. du Sichard. n. 13. & DD.* adeoque quoad tempus præterita *reformatur,* [104] quoad futurum ſuſpenditur: *1. §. f. ad SC. Turpil. L. 32. §. 3. C. h. Gail. 1. O. 144. n. 2.* in prima inſtantia *omiſſa* [105] hic proponuntur, *4. C. de temp. appel.* novæ tamen probationes non admittuntur, niſi quatenus cum prioribus communionem habent, *d. L. 4. clemens ff. de teſtib. N. 90. c. 4 Cz. 3. Reſp. 106. n. 1. Bach. V. 2. D. 3. f. Verſ. ne quis ſuper art. Myns. Cent. 1. obſ. 62.* quod *in Camera* [106] non obſervatur. *Ord. Cam. p. 3. tit. 33. §.* Im Fall aber quod confirmatum in conventu deputatorum de *anno 600 §.* Es ſind in den *Gravaminibus* &c. exploſo decreto contrario *anno 1593. die 13. Decembr.* in Camera facto.

* Introducta, appellans retrogredi amplius non poteſt; ſed ap- p.
pellatio fit utrique *communis.* [107] *28. C. ſ. pr. h. 4. C. de temp. appel. Gail. 1. O. 144. n. 3. 4. Cv. 1. c. 19. d. 8. n. 4. Myns. 2. O. 21.*

* Juſtificatâ, ſequitur ſententia judicis ad quem, qua prior ſen- q.
tentia * in totum * confirmatur. Das wol geurtheilet / übel appellirt / und die Sa- S
che an vorigen Richter wieder zu remittiren; *Cv. 1 c. 30. d. 27. 28.* T

* emendatur. Das übel geurtheilet / [108] wol appellirt: hic *cauſa* t.
*omiſſa* [109] manet penes judicem ad quem, *Cv. 1. c. 30. d. 29.*

* ex parte confirmatur; ex parte emendatur, daß die Urtheil er- u.
ſter

ſter Inſtanz zu reformiren. [illegible] NB. Reformatio fit ſecundum jura temporis & loci primæ inſtantiæ [illegible] autem obſervantur ſtatuta ſecundæ inſtantiæ. [illegible]

*Contraria ſunt* [illegible] Renunciatio partium, [illegible] C. *de temp. appell.* [illegible] Ord. Cam. [illegible] Und vermeil. [illegible] etiam tacita, e. g. ſi partes coram judice à quo in eadem cauſa ulterius procedunt, [illegible] aut ſi lata ſententia [illegible] ad ſolvendum, [illegible] aut ſuper deciſis tranſigunt [illegible] aut jura rerum judicatarum adverſario deferunt [illegible] C. *de [illegible]* [illegible] perſonæ e. g. inſignis latro, [illegible] raptor, [illegible] *appel.* [illegible] convicti vel confeſſi, [illegible] C. *quor. appell. non recip.* [illegible] *de appell.* [illegible] *Quicunque* [illegible] C. *quor. appell. non recip.* [illegible] etiam in cauſis civilibus, ſicut [illegible] confeſſi ſunt. [illegible] *de confeſſ.* [illegible] Contumax ſic non appellat, qui poſt litis conteſtationem legitimè citatus non comparet, [illegible] C. *quorum appell. non recip.* [illegible] *de jud.* [illegible] C. [illegible] Procuratoris contumacia nocet domino, [illegible] C. *de procurat.* qui tamen actione mandati tenetur, & ſi non eſt ſolvendo, [illegible] dominus reſtituitur in integrum. [illegible] *quod eſt contra* Jus: [illegible] *de procurat.* [illegible] *appellationis* [illegible] punitur [illegible] pœnâ [illegible] C. *quorum appell.* [illegible] C. [illegible] Jur. Can. condemnatione [illegible] *in expenſas*, [illegible]

SS SUPPLICATIO [illegible] eſt remedium extraordinarium, [illegible] quo is, qui ſententia
D ejus, à quo appellare nequit, [illegible] gravatus eſt, intra biennium petit, ut cauſa denuò
B cognoſcatur, & ſententia reformetur. [illegible] C. *de* [illegible] C. *de prec. Imp. off.* [illegible] Executionem non ſuſpendit, niſi facta fuerit intra decendium, tunc enim eô ſuſpendit, donec victor [illegible] cautionem præſtiterit. *Aut quæ ſupplicatio* C. *de prec. Imper. offer.* [illegible] in hujus locum ſucceſ-
D ſit [illegible] REVISIO [illegible] Ord. Cam. [illegible] quæ eſt extraordinarium re- U
medium, quo a ſingularibus ad hoc deputatis ſententia ejus, à quo appellari non poteſt, prioribus actis & rationibus diligenter perſpectis, denuò expenditur, & ſi æqua, confirmatur, ſi iniqua, corrigitur. *Ord. Cam.* [illegible] *de reviſione.*

D * Saxonum, LEUTERATIO, quæ eſt remedium moribus introductum, quo ſen- V
tentiæ declaratio vel emendatio ab eodem judice ex juſtis cauſis legitimè petitur: Argumentum a leuteratione ad appellationem procedit, [illegible] & contra. [illegible] quæ ſit prima, ſive ſuperior. Die Obertheurung [illegible] quæ ſecunda: [illegible] *DD.* & [illegible]

SS *Querela* NULLITATIS [illegible] eſt, qua quis ſententiam nullam declarari petit: X
D nulla autem eſt, ratione * perſonæ judicantis, [illegible] C. *ſi à non compet. jud.* actoris, ſi forte non poteſt ſtare in judicio: rei, itidem, aut non legitimè citati, auditi, [illegible] *de ſent. procuratoris* [illegible] *mandato* [illegible] *Cod. de*

* proceſſus, ſi contra ordinem proceſſus factus: [illegible] C. *de* X.
*ſent. & interlocut.* * ipſius cauſæ, & ejus meritorum, e. g. contra [illegible] litem, [illegible] *ſent. ſine appell.* [illegible] ſi ſententia [illegible] contra Jus conſtitutionis

*[illegible]*, (100) e. g. uſuras uſurarum deberi, *l. §. 1. quæ ſent. ſine app. reſc. vid. 2. C. quand. prov. non eſt neceſſ. Bacov. cl. 4. D. 55. Vult. de jud. lib. 4. c. 1.* hæc vel *principaliter* (101) in judicium deducitur, vel incidenter ex cauſa appellationis, adeo, ut Judex eam ex officio attendere debeat, etſi de ea nulla ſit facta mentio *Gail. 1. O. 127. n. 1.* Interdum *cum appellatione conjungitur*, (102) Suſpendit ſententiæ executionem, modò nullitas manifeſte appareat alias non: *Gail. 1. O. 115. n. 2. & O. 127. n. 5.* durat. XXX. *ann.* (103) & talis ſententia nunquam tranſit in rem judicatam, *Gail. 1. O. 127. n. 8.*

SS RESTITUTIO *in integrum*, (104) *de qua ſupr. lib. 4. tit. 1. circ. f.*

SS SYNDICATUS, (105) quo quis conqueritur judicem *male judicaſſe*, (106) & propterea ab eo petit, omnis damni reſtitutionem, *Ord. Cam. p. 3. t. 53. §.* [illegible] *Berthol. & tit. 51. Vult. de Jud. p. 3. c. 5. Paris de Puteo, tr. de Syndicat. Bac. cl. 6. D. 55. th. 5.*

(12.) D RELATIO (107) eſt remiſſio cauſæ dubiæ ab inferiore Judice ad ſuperiorum facta, ut ſuperior reſcribat, quid pronunciandum ſit: *l. & 2. 3. C. de relat. 20. §. 4. de Judic.* de modo ejus vid. *l. 1. 2. 3. C. de relat. Prohibita* (108) eſt in *N. 125. c. 1. 2. Gudelin. 4. 1. 12.* approbata iterum *J. Cam. 1. 68 b.* & Carol. V. in *Ord. Crim.* Hodie in locum ejus ſucceſſit actorum *tranſmiſſio ad JCTOS.* (109) *de qua vid.* [illegible]

## Notæ variorum.

[illegible]

(1) [*[illegible]*] V. [illegible] Reſtitutionem in integrum. [illegible]

(2) [*[illegible]*] [illegible]

(3) [*[illegible]*] [illegible]

(4) [*[illegible]*] [illegible]

(5) [*[illegible]*] [illegible]

(6) [*[illegible]*] [illegible]

[illegible]

(7) [*[illegible]*] [illegible]

[illegible]

(8) [ [illegible] ] [illegible]

[illegible] (9) [illegible]

[illegible] (10) [ [illegible] ] [illegible]

[illegible] (11) [ [illegible] ] [illegible]

(12) [ [illegible] ] [illegible]

(13) [ [illegible] ] [illegible]

(14) [ [illegible] ] [illegible]

(15) [ [illegible] ] [illegible]

[illegible] (16) [ [illegible] ] [illegible]

[illegible] (17) [ [illegible] ] [illegible]

[illegible] (18) [ [illegible] ] [illegible]

[illegible] (19) [ [illegible] ] [illegible]

(20) [ [illegible] ] [illegible]

[illegible]

(21) [ [illegible] ] [illegible] [illegible]

(22) [ [illegible] ] [illegible]

(23) [ [illegible] ] [illegible]

(24) [ [illegible] ] [illegible]

(25) [ [illegible] ] [illegible]

(26) [ [illegible] ] [illegible] [illegible]

(27) [ [illegible] ] [illegible] [illegible]

[illegible] Vel, [illegible] Vel [illegible]

(48) [illegible] Quod [illegible]

(49) [illegible]

(50) [illegible]

(51) [illegible]

(52) [illegible]

[illegible]

(53) [illegible]

(54) [illegible]

(55) [illegible]

(56) [illegible]

(57) [illegible]

(58) [illegible]

(59) [illegible]

[illegible]

(49) [illegible]

[illegible]

(50) [illegible]

[illegible]

(51) [illegible]

(52) [illegible]

(53) [illegible]

(54) [illegible]

(55) [illegible]

(56) [illegible]

(57) [illegible]

(58) [illegible]

(59) [illegible]

[illegible]

(60) [illegible]

(61) [illegible]

(62) [illegible]

(63) [illegible]

(64) [illegible]

(65) [illegible]

(66) [illegible]

(67) [illegible]

(68) [illegible]

(69) [illegible]

(70) [illegible]

(71) [illegible]

[illegible]

[illegible]

(7?) [illegible]

(7?) [illegible] Quod [illegible]

(74) [illegible] Vel ad [illegible]

(75) [illegible]

(76) [illegible]

(77) [illegible] Quod [illegible]

(78) [illegible]

(79) [illegible]

(80) [illegible]

(81) [illegible]

(82) [illegible]

[illegible]

[illegible]

(83) [illegible]

(84) [illegible]

(85) [illegible]

(86) [illegible]

(87) [illegible]

(88) [illegible]

(89) [illegible]

(90) [illegible]

(91) [illegible]

(92) [illegible]

(93) [illegible]

(94) [illegible]

(* [illegible])

(95) [illegible]

(96) [illegible]

(97) [illegible]

(98) [illegible]

(99) [illegible]

[illegible]

[illegible]

(113) [illegible]

(114) [illegible]

(115) [illegible]

(116) [illegible]

(117) [illegible]

(118) [illegible]

(119) [illegible]

(120) [illegible]

(122) [illegible]

(124) [illegible]

(123) [illegible]

(124) [illegible]

(125) [illegible]

(126) [illegible]

Bbbb bbb bbb

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible] ante venditionem bonorum pati velint l. 13 ff. quib. ex cauſ. in poſſeſſ. eat. Quod ſi verò conveniuntur eo in loco ubi appellationis cauſa peregrinantur, non coguntur ibidem ſe defendere, ſed habent domum revocationem l. 2. § 3. ff. de judic. [illegible]. Potuiſſet Autor de hoc titulo dixiſſe tit. 2. n. 8. Sequitur Titulus duodecimus. Apud eum à quo appellatur aliam cauſam agere compellendum: Cujus ſenſus eſt, appellationem non poſſe judici à quo, ceu offenſo & ſuſpecto, [illegible] in aliis cauſis defugere: [illegible] judex & in aliis cauſis gravet, ubi demum appellationis remedium praeſto ſit l. un. h. Ergo judex à quo in aliis cauſis ſuſpectus non eſt. Rauchbarſ. diff. Jur. Civ. & Canon. §. 28. Cui ſimile eſt, quod mortem judicis à quo non ſit cauſa juſta omiſſæ appellationis arg. un. C. de his qui per metum judic. non appell. Schneg. h. t. De quibus licuiſſet Autori dixiſſe tit. 3. in L. ſi tamen de effectibus appellationum agit. Rubr. Titulus XIII Si pendente appellatione mors intervenerit. De quo Autor commode agere potuiſſet tit. 2. in contrario docet quippe hic Titulus Appellantis mortem appellationem extingui quod limitatur, niſi hic hæredem relinquat. Ubi dum de hærede proponitur Regula: eum appellationem proſequi poſſe, ſi velit: Sed ad id invitum non cogi quod limitatur, niſi alterius Fiſci aut Privati intereſſit. Unde ſequitur, hæredem tutoris, ſi hic appellatione pendente mortuus ſit, ad rationes appellationes reddendas adſtringi quod limitatur, niſi ratio jam tutoris reddita fuerint arg. 1. h. Notandum adhuc eſt: (1.) Hæredes appellationem proſequentes, ultra tempus quod defuncto reſiduum erat, adhuc habere quatuor menſes l. ſ. C. h. t. (2.) Intereſſe rei quoque, ſi ea ſine mora alterius pereat, ſeorum quoque appellationi [illegible]. Deducitur per l. 5. C. h. Pergenſ. num. 2.

# TITULUS XIV.

## De Jure fiſci.

*Junge l. 10 C. tit. 1.*

Fiſcus [1] eſt *patrimonium reipublicæ* [2] comprehendens omnes res, omniſque ejus jura, ad peculiare ejus commodum pertinentia, utilitatibus & neceſſitatibus publicis inſerviens, (homonymia *vid. §. f. I. de uſuc. tp. 13. pr. 15. §. 5. h. 3. C. de quadrienn. praeſcr. 30. § 1. & ſeqq. de Leg. 1.*) Fiſcum *habet majeſtas. ‡ 1. §.* D H
*4. ne quid in loc. publ. 3. l. de quadrienn. praeſcr. c. Multi etiam Status* [4] hoc Jus habent S
ex Jure territoriali, vel ex ſpeciali Imperatoris conceſſione, *arg. 1. C. de bon. vac. L. 10. ad municip.* vel regalium impetratione vel diuturna *conſuetudine.* [5] *c. ſuper quibusd. 26. §. praetera de V. S. Ha[illegible] n. 14. in ſ. Georg ad h. 1. de ſucceſſ. fiſc. C. vid. Coler. in deciſ. Germ. p. 1. dec. 22. Mevius, ad J. L. lib. 2. tit. 2. art. 14. n. 66. vid. Peregrin. de Jur. Fiſci. Lib. 1 c. 2. n. 70.*

Jura fiſci ſunt hæc: regulariter utitur *Jure communi:* [6] *12. de compenſ. 25. de pign. 5. C. de fiſcal. uſur. 3. C. de reſc. vend. 3. quadrienn. praeſcr. 10. h. Singulari tamen* [7] A
Jure utitur in * acquiſitione, dum aquirit * generaliter: e. g. territorio acquiſito, B
omnes in eo viventes tenentur ad contributionem, collectas, vectigalia, tributa, b.
&c. * ſingulariter, à certis tantum perſonis in imperio viventibus, atque ratione objecti, vel per * univerſitatem, ſi ſe alicujus totum Patrimonium, vel ejus partem C
acquirit, e. g. (1) ſi heres inſtituatur, tum enim *quoad praeteritum tempus* [8] tantum privati jure utitur: *17. §. 5. 6. de uſur. 6. pr. h.* (2.) *bona vacantia,* [9] *1. 5. C. de bon. vacant.* hic tamen poſtponitur *creditoribus,* [10] *c. 5. x. de pign. L. 17. h.* etiam fideicommiſſariis ex codicillis: *96. §. 1. de L. 1 vid. L. 51. §. 5. de her. inſt. Mev. ad J. L. p. 2. t. 2. art. 14. n. 66.* (3.) Bona per fideicommiſſum incapaci clam relicta acquirendo: *3. pr. 13. §. 1. h. 40 h. n. 3. de his, quæ pro non ſcript.* (4.) hæreditatem indigno auferendo: *§. 1. 14. de hæred. inſt.* (5.) bona damnatorum ex cauſa criminali occupando. *vid. tit. de bon. dam.* * particulariter: cujus *exempla ſunt* [11] *in §. 50. de R. D. 44. de contrah.* c.
*empt.*

*imp. [illegible] C. de [illegible]* [illegible] *d. publ. [illegible]* [illegible] *de confiſc. bon.* hic facienda eſt delatio ſive denunciatio: [illegible] detegere hic poſſunt omnes, *qui non prohibentur* [illegible] *ſeqq. h.*

* conſervatione rerum fiſcalium, (1.) quod agere poſſit contra debitoris ſui debitores, ſi ille detegerit, vel nomina facta ſint ratione fiſci [illegible] *C. quand. fiſc. vel priv. debit.* (2.) quod contra eum non ſemper detur *compenſatio:* [illegible] (3.) *exceptio præſcriptionis* [illegible] *C. de præſc. 30. vel 40. ann.* (4.) quod non cogatur *[illegible]* [illegible] *de legatorum.* (5.) in contractibus fiſcalibus, ratione evictionis ultra ſimplum non tenetur, licet procurator fiſci duplum aut triplum promiſerit. [illegible] (6.) quod habeat tacitam hypothecam in bonis Debitoris ſui. [illegible] etiam *jus prælationis* [illegible] (7.) non teneatur Creditoribus hereditarius hereditate vendita. [illegible] *C. de hered. vel act. vend.* [illegible] ſed tantum contra [illegible] (8.) quod emptor rei fiſcalis locatione à fiſco contractæ ſtare [illegible] fiſcus conductores invitos *retinere poteſt* [illegible] in locatione vectigalium. [illegible] *de publ. & vectigal.* [illegible] (9.) quod fiſcus in fraudem utcunque alienata poſſit revocare: [illegible] (10.) In judicio [illegible] (a.) ſingularem habet advocatum fiſci [illegible] hodie dictum *procurator fiſci.* (b.) [illegible] in rebus fiſcalibus etiam [illegible] poteſt judicare [illegible] (c.) cauſæ fiſcales intra VI. menſes à lite conteſtata finiantur, [illegible] & eidem inſtrumenta à Reo edenda [illegible] niſi cauſæ ſint criminales: [illegible] (d.) Si fiſcus allegat donationem in fraudem ipſius factam, onus probandi transfert in [illegible] (e.) appellare non poteſt publicus debitor, [illegible] *C. quorum appellatio non recipitur.* [illegible] *de Jure fiſci.* Hæc privilegia extenduntur etiam ad *privatum Principis* [illegible] & Auguſtæ patrimonium, [illegible]

* Alienatione ſive diminutione, quo [illegible] *Coll. Jurid. Arg.* [illegible]

## *Notæ variorum.*

(1) [*Fiſci*] [illegible]

[illegible]

[illegible]

(2) [illegible]

[illegible]

(3) [illegible]

(4) [illegible]

[illegible]

(5) [illegible]

[illegible]

(6) [illegible]

[illegible]

[illegible]

(7) [illegible]

(8) [illegible]

(9) [illegible]

[illegible]

(10) [illegible]

(11) [illegible]

(12) [illegible]

(13) [illegible]

[illegible]

(14) [illegible]

(15) [illegible]

[illegible]

(16) [illegible]

[illegible]

(17) [illegible]

(18) [illegible]

(19) [illegible]

(20) [illegible]

(20) [*Dic ſorsan*] [illegible] *Berg.*

(21) [*In donatarium*] [illegible] *Berg.*

(22) [*Plane vide*] [illegible]

[illegible]

(23) [*Pertinentia Principis*] [illegible] *Berg.*

# TITVLVS XV.

## De Captiv. & Poſtlimin. & Redempt. ab hoſtibus.

*Junge l. 8. C. tit. 51.*

(L) Captivi (1) conſiderantur vel in ſtatu * durantis CAPTIVITATIS: hinc de A
D occupatione bellica ſive captivitate, *quæ eſt occupatio rei* (2) hoſtilis in juſto
I bello facta. *Eſt vel publica*, (3) quæ fit auctoritate & nomine reipub. vel
D privata. quæ fit à ſingulis, ut ſingulis acquiratur. [illegible]
D Cauſa efficiens *eſt Jus Gent.* (4) [illegible] *l. N. G. & C.* [illegible]
C

de Jur. perſon. §. 17. I. de R. D. 5. §. f. de A. R. D. Cic. 2. de offic. 2 Sam. 12. verſ. 26. Grot. de I. B. P. lib. 3. c. 6 n. 1. com. 4. & ſeq. conſ 19. q. 2. Cr. 4. c. 35. d. 8 Vid. die Reuter-Beſtallung, ſub. Imp. Maxim. II. zu Speyer aufgerichtet / an. 1572. art. 64. 96. Item Fußknecht Beſtallung / de eodem anno. art. 88. & militantes perſonæ: [a] 13. qui teſt. fac. 10. §. 2. L. 5 a. 17. b. A latronibus capti [*] liberi manent. dd. LL.

Capiuntur res hoſtiles, [7] 51. §. 1. de A. R. D. & [*] perſonæ. § 17. I. de R. D. 7. pr. de A. R. D. etiam transfuga, [R] 7. de re milit. § vſ. ad L. Corn. de ſicar. d. Reuter-Beſtallung. art. 62. 63. cujuscunque ſint ſexus aut conditionis, 10. §. f. Innocentibus [*] tamen parcendum, Exod. 23. v. 7. Deut. 20. 14. Reuter-Beſtallung. art. 70 Fußknecht-Beſtallung. art. 6. modò non admiſerint aliquid ſingulari vindicta dignum: Grot. lib. 3.
b c. 11. n. 9. 10. [*] res hoſtium, mobiles & immobiles, 20. §. 1. b. ſacra & ſancta, [m] 36. de religioſ. 4. de ſepulchr. viol. Vid. tamen [n] Grot. lib. 3. c. 5. n. 3. & incorporales, ſc. cohærentibus [o] corporibus: quibus inhærent: Gentil. de jur. bell lib. 3. c. 5. L. 32. in f. de S. P. V. 12. comm. prad. Grot. lib. 3. c. 8. n. 4. non etiam res alienæ apud hoſtes repertæ, ſit capiendæ, §. 17. I. d. R. D. 5. §. f. de A. R. D Grot. 3. c. 6. n. 5. & 26. in dubio res apud hoſtes reperta hoſtilis cenſetur, Grot. ibid. neque Chirographo occupato debitum etiam eſt occupatum, nam ipſum debitum non eſt occupatum per occupationem ejus inſtrumenti; in quo continetur ejus probatio: [p] 4. de pign. 24. de probat. 10. de Leg. 3. f. de bon. quæ in teſt. del. (obſ. 5. §. f. [q] de A. R. D. 39. de Leg. 3. §. 1. & 2. de lib. leg. Dyonyſ. Halicarn. lib. 5. Albertic. Gentil. 3. c. 5. Grot. 3. c. 8. n. 4. in f.)

Forma eſt (1.) occupatio, [r] 5. §. f. 7. pr. 51. §. 1. de A. R. D. 1. §. 1. de A. vel A. P. (non ſufficit aſpectio: [s] 3. §. 1. & 3. 18. §. f. de A. vel A. P. §. 12. I. de A. R. D. 2. Grot. 2. c. 8. n. 7. hæc occupatio eſt firma apprehenſio, quæ fit animo ſibi habendi, 3. §. 1. de A. vel A. P. ita, ut res in præſidium ſit translata, & ſpes recuperandi [t] præcluſa: 5. §. 1. b. hinc capta ab hoſtib. & in fuga ſtatim recuperata, domino reſtituuntur: arg. d. §. f. fam. herc. in f. Cr. 4. c. 31 d. 8. L. 44. §. 1 de A. vel A. P. f. b. Hodie conſuetudine [u] receptum eſt, ut res maneat apud victorem XXIV. horas: Grot. 3. c. 6. n. 3. in f.) (2.) ab hoſtibus in bello, [x] 5. §. 7. de A. R. D. §. 17. I. de A. R. D. (ubicunque res deprehendatur, § 12 I. de R. D. Grot. 3. c. 6. num. 26. Dominus territorii tamen prohibere poteſt, [y] ne quid hoſtiliter ibi fiat §. 12) J. de R. D. dd Vran. L. 11. de S. P. R. 13. §. 7. de injur. (3.) legitimo, vid. Carpz. 4. c. 35. d. 8. n. 10. non etiam civili. 21. §. 1. b. Grot. 3. c. 6. n. 27

Captæ [*] perſonæ [z] fiunt ſervi: §. 4. I. de Jur. perſon. L. 5. §. f. ſundi. 7. de A. R. D. hodie non; [aa] v. Reuter-Beſtallung. ſub. Imp. Maximil. II. zu Speyer aufgerichtet / an. 1571. art 94. 95. Grot. 3. c. 7 in f.

[*] res fiunt capien[tium] [bb] 5. §. 7. de A. R. D. §. 17. I. de R. D. cujuscunque ſint conditionis, 20. § 1. b. Grot. 3. c. 6. n. 13. Vid. tamen d. [cc] Reuter-Beſtallung. art. 96. & Fußknecht-Beſtallung. art. 62. 64. præda tamen, quæ hoſtibus jam devictis & fugatis reliqua eſt, ad Imperatorem pertinet. [dd] p ff ad L. Jul. pecul. 36 §. 1.
D C. d. donat. [*] L. CORNELIÆ, [ee] quæ captos [ff] apud hoſtes mortui finguntur eò tempore deceſſiſſe, quo capti ſunt. 12. qui teſt. fac. poſſ §. 5. I. quib. mod. Jus patr. poteſtatis ſolv. §. f. I. quib. non eſt permiſſ. teſt. fac. 10. de vulg. & pup. ſubſt. 11. & 12. b. ſc. quoad omnia jura 18. b. 44. in f. de uſurp. [*] Juris POSTLIMINII, [gg] quod eſt jus, [hh] quo res ex hoſtium poteſtate reverſa, priorem ſtatum ac priſtina jura reci-

 pit.

ſit, 14. h. 19. h. Origo J. Gent. 19. informatio J. civ. *Grot.* [illegible] *Locum ha-* C
D *bet* [illegible] in perſona cujuſcunque conditionis aut dignitatis, &c. 19. §. 5. Excipe ta- S
men (1.) *transfugas,* [illegible] 19. §. 4. h. niſi *ſervus transfugerit:* [illegible] 19. §. 5. (2.) qui hoſti ſe-
ſe dediderunt, armis victi: 17. h. (3.) qui ſuâ ſponte apud hoſtes manſerunt: 20. *pr.*
(4.) L. heres ex captivis apud hoſtes conceptos & natos, nam hi ex *parentum,* [illegible]
non ſuâ perſonâ recipiunt Jus poſtliminii: 11. §. 1. C. h. (5.) *Caſum,* [illegible] *L.* 4. h. (6.)
quæ pacto exempta ſunt ab hoc jure, 12. *pr.*

d. [illegible] *rebus,* 19. *pr.* [illegible] immobilibus, 20. §. 1. h. 20. *quib. mod. uſusfr. amittitur.* Mo-
biles regulariter non habent jus poſtliminii, 28. *Bocer. de bello* [illegible] *Grot.* [illegible] *Cannan* [illegible] *de jure poſtlim.* [illegible]
*p.* 200. ſunt tamen exceptiones [illegible] in *L.* 2. 3. h. (Hodie nullæ res mobiles priſtinis do-
minis reſtituuntur, *Grot.* [illegible] modò apud hoſtem pernoctaverint, *Cannan d. l.*
[illegible] ) modò ex captivitate hoſtium, 19. §. [illegible] *L.* 27. h. Libertate, 20. h. 1. §.
3. *de dol. mal.* ſint reverſæ, [illegible] §. 1. h. *quod etiam factum,* [illegible] ſi ad amica præſidia per-
venerint: 19. §. 3. *Cannan d. l.* ( *Diſſ. Cov.* [illegible] *Vinn. ad* §. 5. *I. quib. mod. Jus
patr. pot. ſolv.*) & quatenus, ſi liber homo ſit animo ad hoſtes [illegible] *redeundi,* [illegible]
[illegible] *ad L. Cornel. de adulter.* [illegible] *Cannan. d. l.*

E [illegible] Durante captivitate, *jura captivi pendent.* [illegible] 12. §. 1. 5. *L.* 22. §. 2. h. §. 5. *I. quib.* E
*mod. jus patr. pot. ſolv.* [illegible] *de S.T. Maced.* 6. §. 4. *de vulg.* [illegible] *pr. et quib. cauſ. maj.*

e. [illegible] reverſi ſemper cenſentur in civitate manſiſſe, [illegible] 12. §. 1. & [illegible] *L.* 10. 19. *pr.*
24. h. & *recipiunt omnia jura,* [illegible] *C.* h. & *dd. LL.* & omnia jura contra eos reverti-
cunt: 12. §. 6. non etiam, quæ ſunt facti, *ut poſſeſſio,* [illegible] quæ de novo debet appre-
hendi: 23. §. 1. *de A. vel A. P.* [illegible] *ex quib. cauſ. maj.* ſic nec maritus *uxorem* [illegible] abs-
que novo conſenſu recipit, [illegible] *de conjug. ſerv.* aut *ſtipen-
dia* [illegible] medii temporis petuntur, 1. *C. de re milit.* res & ſervi priſtinis dominis re-
ſtituuntur, 12. §. [illegible] *L.* 20. §. [illegible] licet à militibus virtute bellica ſint liberati, 12. C. h.

*REDEMPTI* [illegible] ſunt, qui pro certo pretio ab hoſte dimiſſi, *ex ſolut. matr.* In
cujus favorem multa ſunt conſtituta *ſingularia,* [illegible] *d. L.* 20. *L.* 21. *C. de SS. Eccleſ. N.* D
[illegible] §. 13. ipſe redemtus, pretium ſui causâ ſolutum reſtituere tenetur,
[illegible] *C.* 12. §. 7. & [illegible] §. 6. niſi redemtor hoc fecerit animo donandi, (quod præſu-
mitur in dubio *in uxore,* [illegible] 17. *de Gloſ. C.* h.) aut gratuitò hoc remiſerit, 2. 11. 17. C.
h. ſive redemtio [illegible] donaverit vel *legaverit:* [illegible] 43. §. 5. *de Leg.* 1. Quamdiu re-
demtus pretium non ſolvit, tamdiu redemtor poteſt eum retinere *jure quaſi pi-
gnoris,* 2. 11. C. h. Redemtus heres inſtitutus, hereditatem adit, licet pretium nondum
ſit ſolutum: 15. C. h. hinc nec muliere redemtæ enatæ liberi ſunt pignoris loco, 8. C. h.

## Notæ variorum.

(1) [Captivo] Captivorum & eorum captorum triplex eſt conditio [illegible]

(2) [Quo eſt captivo] [illegible]

Captivi ex bello [illegible]

[illegible]

(4) [illegible]

(5) [illegible]

(6) [illegible]

(7) [illegible]

[illegible]

Cccc ccc ccc 3 [illegible]

[illegible]

([illegible]) [[illegible]] [illegible]

([illegible]) [[illegible]] [illegible]

([illegible]) [illegible]

([illegible]) [[illegible]] [illegible]

([illegible]) [[illegible]] [illegible]

([illegible]) [[illegible]] [illegible]

[illegible]

[illegible]

(17) [illegible]

(18) [illegible]

(19) [illegible]

(20) [illegible]

(21) [illegible]

(22) [illegible]

(23) [illegible]

(24) [illegible]

(25) [illegible]

(26) [illegible]

[illegible]

(37) [illegible]

(38) [illegible]

(39) [illegible]

(40) [illegible]

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(46) [illegible]

(47) [illegible]

(48) [illegible]

(49) [illegible]

50 [illegible]

(51) [illegible]

(52) [illegible]

(52) [*Quoſt pygnore*] Quod & hodie [illegible], quod [illegible] operæ pretium redemtionis compenſetur. Regulariter [illegible] operis hoc pretium compenſetur *l. fin. C. h. t.* [illegible] ex hoc [illegible] argumentum, valere obligationem ad operas. [illegible] per ſupervenientem [illegible] quam [illegible]. [illegible] *ad l. 6. ff. h. t. n. 2. Struv.* Redemtus, [illegible] quidem [illegible] liber, [illegible] redemtoris ſervus [illegible], [illegible] ex quo [illegible]. Hodie [illegible] ex jure [illegible], [illegible] redemti [illegible], uſque ad [illegible] ci, [illegible]. Cum enim hodie, [illegible] experientia, redemtiones ſint frequentiores, [illegible] inter belligerantes partes [illegible], ut redemtionis pretium, pro qualitate perſonæ capta, determinari ſolet. [illegible] Capita [illegible] plerumque propria pecunia redimuntur, quod ſi tamen aliter [illegible], [illegible] licet, ſi miles [illegible] ad [illegible] *Titius.*

# TITULUS XVI.

## De re Militari.

*Junge l. 12. C. t. 36.*

Miles eſt (1) perſona, ab eo, cujus eſt belligerandi poteſtas, in bellum lecta, D
in numerum relata, & ſacramento confirmata, (2) *v. 2. §. 1. h.* Poſſunt mili-
litare omnes volentes, *R. J. de anno 1570. §.* Demſelben / ꝛc. Olim etiam S
cogebantur: (3) *4. §. 10. h. vid. Mev. ad Jus Lubec. lib. 1. t. 2. art. 1. Wehn. Be-
ſold. voc.* Folge. Impediuntur, qui operas militares præſtare non poſſunt, furioſi,
cæci, muti, ſurdi, claudi, &c. *13. §. 5. h. Vid. 4. toſt milit.* Probibentur ſervi, *11. h.* qui
ſtatus controverſiam patiuntur *8. h.* infames, *4. §. 4. h.* omnes judicio publico damnati,
&c. & qui recenſentur in l. *4. §. h. & t. 1. C. qui milit. prohib.* Habent *Jus ſingula-* E
*re,* (4) ratione *diſciplinæ militaris,* (5) *v. 2. pr. h. L. 6. §. 3. l. 5. §. 1. 12. 13. l. 5. §. 1. 15. §. 1. h.*
*& privilegia ſingularia,* (6) ut *competentiæ,* (7) *6. 18. d. re jud. 7. de caſtr. pec.* teſtamenti fa-
ciendi; item miles indebitum ſe ſolviſſe dicens, non tenetur hoc probare: *25. §. 1. de
probat.* militi licet *Jus igno-rare.* (8) *9. §. 1. de jur. & fact. ignor. vid. Ziank, de privil. milit.*

### *Notæ variorum.*

(1) [*Miles*] Eſt perſona [illegible], [illegible] & [illegible], ex generalibus principiis omnes *Gentes* intelligunt, ut [illegible] *Romanum*, hac in parte [illegible] non ſit. [illegible] ſe [illegible] ad bellum cogi, ex [illegible] civilis [illegible], quamvis [illegible] cauſa [illegible] debent, ſine qua [illegible], [illegible] tyrannis eſt. [illegible] ad militiam naturaliter requiratur [illegible] & aptitudo præſtandi ſervitia militaria, cætera ſunt ex jure civili [illegible], quorum tamen, niſi quatenus communem Gentium [illegible], non magnus hodie eſt uſus, [illegible], quod [illegible] *Romanus* [illegible] *Titius.*

(2) [*Confirmata*] Jure *Civili* [illegible] miles eſſe, ex quo in numerum relatus eſt: [illegible] vinculo ad fidem & officium adſtringuntur milites. [illegible] hodie Sacramento [illegible] confirmari ſolet. [illegible] hanc [illegible] miles pœnas militari ſubjacent, de eo videri poteſt *Myler.* [illegible] *art.* [illegible] Churfürſtl. Brandenburg. Kriegs-Recht. *adde Diſſ. de Vaſallo Deſertore* [illegible] *1. n. 97. ſeq. Str.*

(3) [*Cogebantur*] Hodie quidem voluntarii dicuntur milites, ſed ſi neceſſitas publica urgeat, adhuc compelli poſſunt, quorſum pertinet [illegible] der [illegible] vel [illegible] liberare poſſint. *Myler. de Statib. Imper. P. 2. c. 76. n. 4.* [illegible] tamen plerumque ſolet, ſi [illegible] ſubſtituere poſſint, *arg.* [illegible] *an. 1564. §.* [illegible] *22. Struv.* Unde [illegible] *4. §. 10. 12. ff.* Hodie in Imperio [illegible] plerumque, qui [illegible]. *Doctores* [illegible] *Titius*, [illegible] *ſoluto*, [illegible]

Dddd ddd ddd [illegible]

*hoſtes cogere*, præcipuè *defenſionariis* tali moderamine adhibito. *Schilter. ad ff. Exerc.* 50 §. 12. Ab hac *ſequela jure* Der Hohen Folge / differt, Der Gerichts-Jagd-Folge 2c. vid. *Wehn. Obſ. Pr. verb.* Folge. *Mencken.*

Nahe Folge.

(4) [*Jus ſingulare*] Milites poſſunt ſpectari, ut *homines*, ut *cives*, & ut *milites*. Ultima conſideratio iterum varia eſt, licet enim milites conſiderare, quatenus illi apud alios *hoſpitantur*, vel in ſpecie in *hybernis* ſunt, aut in *præſidiis* *tenduntur*, vel in *bellum eunt*, aut in *expeditione deprehenduntur*. Ex quo liquet, quod *jura, officia & debita* militum, ſint vel *communia*, quæ in alios etiam homines & ſubditos cadunt, vel *propria* ſeu *militaria*, quæ ad milites quà tales pertinent. Ubi autem jura illa & obligationes partim ex lege naturali, partim civili ſunt. Ita in *Germania*, ex Ordinationibus militaribus, præcipuè repeti debent. *Juris Romani* hac in re exiguus eſt uſus, ſi tamen eodem aliquid cautum ſit, quod ad milites noſtros quadret *dic. l.* illud, ſi de abrogatione non conſtet, admittendum erit. *Titius.*

Diſciplina militaris accuratè obſervanda.

(5) [*Diſciplina militaris*] Deſertor ſtationis, qui in pugna arma amiſit, vel alienavit, qui pacem turbavit, qui rem à duce prohibitam fecit, vel mandata non ſervavit, etiamſi bene geſſerit, capite plectitur. De cætero hic diſtinguendum eſt inter delicta militaria & communia. In illis coram judicio militum conveniuntur. In his ſi à judice ordinario deprehenduntur, ibi forum ſortiuntur. *Stryk.*

Militum Privilegia.

(6) [*Et Privilegia ſingularia*] Nam à pœna commiſſi eſt immunis, vectigali de mercibus non ſoluto *l. 7. l. 3. C. de vectig. & commiſſ.* ubi *Brunnem. n.* 2. Juris ignorantia ipſi non eſt damnoſa, e. gr. prætermiſſis exceptionibus *l. 1. C. de jur. & fact. ignor.* torturæ non ſubjectus, *l. 8. C. de quæſtion.* indebitè ſolutum allegans, præſumitur indebitè ſolviſſe *l. 25. §. 1. ff. de Probat.* foro militari fruitur, ſive ex cauſa civili *l. 6. C. de juriſdict.* ſive ex crimine militari, ut deſertionis *l. 3. ff. h.* ſive ex communi apud ſigna, ſive ex leviore, ubi vix admiſſo conveniatur *l. 9. ff. de cuſtod. & exhib. reor.* ob enormia etiam delicta, dummodo ſint communia, ut latrocinium in loco delicti forum ſortitur & punitur, *d. l. 3. Carpz. p. 4. c. 9. d. 11. Ziegler de jur. Majeſt. l. 1. c. 29. th. 39.* ubi vid. *Ord. Saxon. Eccl. th.* 34. Idem ex civilibus cauſis matrimoniales quoque excipit *th.* 34. 35. quod admitto, *niſi formatum ſit* Ein ſelb *Conſiſtorium.* Moribus ad cujusvis loci conſuetudines, vel ad dictam *Juris Civilis* diſtinctionem recurrendum. *Mencken.*

(7) [*Competentiæ*] Hoc eſt, miles nunquam excutitur in ſolidum, ſed neceſſaria vitæ ſubſidia ipſi relinquenda. Hinc in caſu, ubi Princeps appanagiatus conveniebatur debito 20000. *thal.* in militia *Italica* contracto, ille provocabat ad beneficium competentiæ, cum ipſi præter appanagium, quod alimentorum loco eſt, nihil ſupereſſet. *Stryk.*

(8) [*Jus ignorare*] Hoc privilegium adeò generale eſt, ut etiam *JURISPERITI* in bellum ſe conferentes, ſi poſtea errore juris læduntur, ad hanc ignorantiam provocare poſſint. *Stryk.*

# TITULUS XVII.
## De Caſtrenſi peculio.

V*id. ſupr. ad tit. de peculio, lib. 15. tit. 1.*

# TITULUS XIIX.
## De Veteranis.

### *Jung. L. 12. C. tit. 47.*

Veterani ſunt, qui impletò legitimò militiæ tempore (*XX. ann. L. 5. C. de his, qui non implet. ſtip. 13. §. 3. de re milit.*) honeſtè dimiſſi ſunt. *Miſſio eſt* [1] D
(1.) honeſta, quæ fit impleto legitimo tempore militiæ: (2.) Cauſaria, quæ fit propter aliquod vitium corporis vel animi, ut operas militares præſtare non poſſint: (3.) Ignominioſa, quæ fit propter *delictum aliquod*, [2] *13. §. 3. de re milit.* Hi veterani immunes ſunt *ab omnibus oneribus* [3] perſonalibus: *1. 2. h. 5. C. de his, qui non implet. ſtipend.* non etiam à realibus: *2. §. 1.* Eximuntur plebejorum numero, & honeſtioribus accenſentur, *iisdem ferè privilegiis* [4] cum *decurionibus uſi*, [5] E
*l. 3. C. h.*

Not a

## *Notæ variorum.*

Miſſio alia eſt ignominioſa alia honeſta.

(1) [*Miſſus eſt*] Cauſaria & ignominioſa miſſio aliis Gentibus quoque ſunt uſitatæ, ſed honeſta, ut inde orti *Veterani*, eorumque jura *Romanis* ferè ſunt propria. Scilicet eo ſolent homines eſſe ingenio, ut res ſibi inutiles libenter à ſe rejiciant, aut delicta faciè puniant, ſed ad præmia benemeritis diſtribuenda non perinde ſunt proclives. Interim id minimè laudari debet, quod hodie Gentes bellicoſæ, militum gregariorum vel emeritorum, vel mutilatorum, nullam habeant rationem, ſed iis tam miſera egeſtate ut plurimum luctandum ſit. In univerſum, ut hoc obiter adjiciam, Imperantium, circa rem militarem, triplex conſtitui poteſt officium. Antecedens, dum neminem ſine juſta cauſa ad bellum cogere debent. *Concomitans*, quo ſtipendia militibus exſolvere, militum curam gerere, eorumque actiones, ne paganos vexent, aut gregarii à Præfectis ſuis iniquè habeantur, moderari tenentur. Et *conſequens*, quod ad milites ſenio, morbis aut vulneribus confectos, et ad ſervitia militaria inhabiles factos, pertinere debebat, de quo modo diximus. *Titius.*

(2) [*Delictum aliquod*] Alii *quartam* addunt, quâ is, qui militiam ſubiit, munerum evitandorum gratia mittitur, ſed ſalva fama *l. 7. §. 2. ff. de his qui not. infam.* etſi cauſa miſſionis per ſe ignominioſa, non neceſſe eſt, ut addatur ignominiæ cauſa miſſum vid. *Brunnem. ad d. l. 2. n. 7. Stryk.*

(3) [*Ab omnibus oneribus*] Hinc quamvis ſponte munus aliquod ſuſceperint, non tamen ob hoc ad alia ſubeunda compelluntur *l. 2. pr. ff. h. t. C. de his qui ſponte publ. mun. ſub.* cujus ratio, quod renunciatio ſit ſtricti juris, nec extendenda de caſu ad caſum. *Stryk.*

(4) [*Privilegiis*] Quo ad pœnas fuſtibus non cæduntur *l. 3. ff. h. t.* (2.) Immunitate quadam à muneribus perſonalibus gaudent *l. 2. l. 4. pr. §. 1. l. 5. pr. § 1. ff. h. t.* (3.) Honore eodem cum Decurionibus afficiuntur *l. 3. ff. h.* ſed iſta privilegia non eſſe apud nos recepta, *Schilter Exerc. 50. §. 76.* affirmat, ſcilicet quia hodiè rarò ſoli patriæ milites ſerviunt, & propter viginti annorum lapſum dimitti, vix ſolent, nihilominus ſi quis per integrum vicennium pro patria conſtanter militaverit & honeſte dimiſſus ſit, honoris & immunitatis aliquid ei deferendum eſſe cenſet *Brunn. ad l. 2. ff. h. t. n. 2. Jung. Mev. p. 4. d. 173. num. 6.* Interim veteranus poſt miſſionem fori militaris privilegium amplius non habet *l. f. C. de veteran. Mencken.*

(5) [*Decurionibus*] Hoc eſt, non ad beſtias, nec ad fuſtigationem condemnari poſſunt; Liberorum quoque parentum jure gaudent *l. 3. ff. h. t.* Verum in gregariis militibus, hæc privilegia hodiè parum ſunt conſpicua. *vid. Mev. p. 3. D. 72. Stryk.*

# LIBER L.

# *TITULUS I.*

## Ad Municipalem & de Incolis.

*Junge l. 10. C. t. 38.*

A MUNICIPES [1] hic ſunt, qui in inferioribus civitatibus ſuffragiorum & (1.) D
B honorum ſunt participes, & munera ſubeunt civilia. **Naſcuntur* [2] C
* verè, qui ex patre cive naſcuntur, *1. §. 2. h. 3. C. h.* non ſufficit mater, *dd. LL.* niſi quis legitimum patrem *non habeat*, [3] *9. h. 24. de ſtat. hom* aut filius ſit apud hoſtes *conceptus*, [4] *1. C. de poſtlim. reverſ.* aut in *caſu*: [5] *L. 1 §.*
b. *2. h.* Item. *L. 22. 29. 61. 62. C. de decur.* * fictè per adoptionem, *15. §. f. h. 17. §. 9. h. 7. C. d. adopt* & per manumiſſionem: nam manumiſſus civis fit, *ubi patronus,* [6] *1. pr.*
a. *22. pr. h. 7. C. de incol. 2. C. h.* *Fiunt per aſſumtionem: ſive allectionem: D
*1. pr. h. 7. Cod. de incol.* quæ hic eſt in numerum civium receptio, & juris

 civi-

civitatis [illegible] quod heiſt der Rath. Aſſumuntur omnes, qui non in ſpecie prohibentur, ut (1.) *Hæretici*, *arg.* [illegible] *Cod. de hæretic.* (2.) Judæi: *vid.* [illegible] *A. R. Ord. Imper. de anno* [illegible] von Juden und ihrem Wucher. *Rec. Imper. de anno* 1577. [illegible] (3.) [illegible] ſive proſcripti. *Ord. Cam.* [illegible] (4.) Aliorum Statuum [illegible] *& ſubditi*, antequam a domino ſuo prioribus dimiſſi ſunt: *A. R.* [illegible] von Pfal-Burgern, quaſi falſchen Bürgern [illegible]. Si cui [illegible], tum [illegible] *Rebuff. de priv.* [illegible] jus civitatis ac poſt eum per

C aſſumptionem, reſignatione [illegible] quod hodie promiſcue liberum eſt, [illegible] §. Wo aber unſer modo ſolvatur der Abtrag der Leib-Herrſchaft und Nach-Steur: Cenſus etiam hodie ſolvendus, der Abzug, alibi tertia, alibi [illegible] alibi decima pars. *Singularia in Wirtemb.* [illegible] *O. P.* [illegible] *& reſcript.* [illegible] *Joh. Friderici, de dat.* [illegible] *April. anno* [illegible]

* adoptione quæſitam emancipatione, 10. h.

(2.) *Incolæ* ſunt, qui in civitate domicilium conſtituerunt, ſed jus civitatis non

D [illegible], nec jus ſuffragii aut honorum ſunt conſecuti, [illegible] *de V. S. vid.*

C [illegible] h. de domicilio, *vid.* [illegible] *de judæ.* Conſtituunt domicilium, qui rationis uſu non deſtituuntur, [illegible] C. [illegible] *de incol.* [illegible] patres & filiifam. [illegible] (Uxor conſequitur domicilium ex perſona mariti, [illegible] (non etiam ſponſa [illegible]) modo ſit legitimum matrimonium: [illegible] hoc etiam retinet vidua, [illegible] C. *de incol.* [illegible] *vid.* [illegible] C. *de incol.*) ubicunque voluerint [illegible] etiam *pluribus in locis* ſimul: [illegible] Vagabundus & qui migrat domicilio relicto, *non habet domicilium*, naturale tamen retinere cenſetur in caſu, quo habitationis domicilium ſibi non conſtituerunt. [illegible]

E [illegible] incola communionem habet [illegible] commodorum, ad civilia munera compellitur, [illegible] C. *de incol.*] 29. h. non etiam admittitur ad ſuffragia *& honores.*

## Notæ variorum.

[*ad* [illegible]] In [illegible] *Republica* ſubditorum [illegible] [illegible]

[illegible]

[illegible]

[illegible]

(15) [illegible]

(16) [illegible]

(17) [illegible]

(18) [illegible]

(19) [illegible]

(20) [illegible]

(21) [illegible]

(22) [illegible]

(23) [illegible]

[illegible]

(24) [illegible]

publicorum [illegible] qui [illegible] cum civibus non admittuntur, *Zob. d. l. n. 12. Lauterb. h. de decurionib. th. 55* quod apud nos usu satis evenit. Imo nonnullibi etiam comparere & comparendo publica curare prohibentur *Ref. Or. de a. 1653. §§ gr. 217.* Alias in Germania inter cives & incolas non servari differentiam regulariter, sed tum demum, quando civibus certa jura specialiter reservata sunt, [illegible] *Mev. p. 2. D. 160. n. 6.* Verum *Gail. 2. O. 35. n. 6.* sub incolæ vocabulo civem [illegible] comprehendit, [illegible] cive [illegible] opponere [illegible] probat, & *Mevius* de loco, ubi post certi temporis lapsum incola pro cive habetur, intelligendum. *Mevius.*

(25) [*Plurimos in loco*] [illegible] si illis locus sub eodem *Principe* sint, vel inter *Principes* nullum bellum. Hoc enim casu Privilegia suorum civium in præjudicium aliorum opponere non debent, sed in quovis loco [illegible] se subsistere [illegible] *Bergh.*

(26) [*Non habent domicilium*] Hinc ubicunque deprehenduntur, forum sortiuntur: Quapropter si in aliquo loco quis suum domicilium habeat, ejus de [illegible] ponatur, [illegible], ubi [illegible] est, [illegible]. *Muller. Prom. Per. Marchet. Resolut. 12. n. 16. Brunnem. Cent. 3. Dec. 25. Bergh.*

(27) [*Commorantur*] Specialis autem est in quibusdam locis, quod [illegible] commorantium [illegible] concedant, nisi verus civis sit. *Bergh.*

(28) [*Obl. 3.*] In hac l. 3 [illegible] intelligendum, quod [illegible] administrationem alicujus Reipublicæ sine dignitate [illegible] suscipiant, de quo in *l. 14. §. 1. ff. de muner. & honor.* Ad [illegible] ergo [illegible] pertinet, *Bergh.* In dicta *l. 3.* non dicitur *Incolas non teneri*, sed *eos, qui in Territorio alicujus [illegible] commorantur* (id est, peregrinos) velut incolas (sed tamen [illegible]) *ad subeunda munera non adstringi.* Comparet igitur peregrinos & incolas, ut [illegible], ut hos ad munera [illegible] [illegible], ut peregrini [illegible] suos [illegible]. *Vinnius ad Obb. l. 3. C. de [illegible] incolas ad subeunda munera non adstringi.* [illegible] [illegible] de incolis, non vere [illegible], sed quicunque aliquid ad tempus commorantibus, [illegible] *qui in Territorio alicujus [illegible] commorantur*, in [illegible] qui nec cives, nec incolæ [illegible], commorantur [illegible] pro [illegible], qui [illegible] [illegible], i. e. [illegible] incolæ & pro incolis ad munera subeunda non adstringi, [illegible] *Berger.*

(29) [*Et honores*] Hos enim [illegible] duibus [illegible]. *Bergh.*]

# TITULUS II.

## DE Decurionibus & filiis eorum.

*Junge l. 10. C. tit. 13.*

D Vid. l. 239. §. 5.[1] *de V. S. 33. C. h. Decuriones*[2] sunt, qui in municipiis consilio publico præpoſiti ſunt, quaſi curiæ ſuæ Senatores. Quod Romæ erant Senatores, id in municipiis decuriones ſunt; & quod ibi conſules, id hic duumviri, qui eligebantur è decurionibus, *d. L. vid. 2. C. h.*

S Eligi poſſunt omnes, *etiam ſpurii*,[3] *6. pr. h.* ſi ſc. alii deficiant, *3. §. 2. h. Palaces. tr. de ſpuriis. Zob. in Ichnograph. municip. c. 15.* contra § Et filii reorum delicti publici, *2. §. 7. h. propter at.*[4] *de pœn.* Literarum inexperti *6. C. h.* Prohibentur tamen (1.) *Minores XXV annis*,[5] & ſenes, *11. h.* (2.) infames, *8. C. 6. §. 4.* (3.) pauperibus præferantur divites, *contrarium putes*[6] *46. C.*

E (4.) publicorum criminum rei, *17. §. 12. ad munic. 6. §. 3. in f. ff. h.* Officium eorum, *ut & privilegia*,[7] ſunt in *L. 3. C. de nat. lib. ſ. ff. h.* Inviti cogebantur ad hoc munus.

### Notæ variorum.

Decuriones quaſi decimus pars municipii.

(1) [*Vide 239. §. 5.*] Ibi dicitur, Decuriones [illegible] [illegible], quod decima municipum pars ad hoc conſilium eligi ſolebat. *Bergh.*

(2) [*Decuriones*] Cum hi [illegible] comparari [illegible] Senatoris ornatum, vide tamen *Mehn. h. t. Bergh.* In coloniarum deductionibus decimus quisque, conſilio publico grato à Triumviris electus, Decurio vocatur, *vid. d. leg. 239. §. 5. de V. S. POLLET. Hiſtor. Forenſ. Roman. l. 3. c. 8.* [illegible] municipiorum.

rum, ex propriis ſtatutis cognoſcendi ſunt, *Juris Romani* exiguus hac in parte erit uſus; Si tamen aliquid poſitivi circa *Decuriones Romanos* occurrat, quod ad noſtros Senatores etiam quadret, in ſubſidium applicari poterit. *Tabor.*

Non eſt impedienda dignitas ejus qui nihil admiſit.

(3) [*Etiam ſpurii*] Ratio, quia non eſt impedienda dignitas illius, qui nihil admiſit, *l. 6. pr. ff. h. t.* Ex quo colligitur, *cujus nullum turpe factum, illius nulla eſt infamia.* Parentes ergo ſtupratores excludendi forent à Collegiis, non verò liberi ex ſtupro nati, illi enim, non hi peccarunt. *Stryk.*

Crimen, vel pœna paterna, nullam filio maculam infert.

(4) [*Propter l. 26.*] Crimen vel pœna paterna filio nullam maculam inurere poteſt. *Stryk.*

(5) [*Minores XXV. annis*] Fallit hoc in *Saxonia*, alibique, ubi majorennitas *anno* 22. incipit. Imò, non tam ad annos, quam ad prudentiam adminiſtrandi negotia reſpiciendum. *Stryk.*

(6) [*Cæterum pares*] Hoc eſt, niſi pauper animi integritate & bonis moribus præpolleat. *Stryk.*

Privilegia Decurionum.

(7) [*Iis & privilegia*] *Immunitas à tortura, fuſtium caſtigatione, in metallum damnatione l. 3. ff. de veteran.* (2.) *Jus petendi alimenta ex publico, ſi facultatibus lapſi ſint, maximè quando ob munificentiam in patriam, patrimonium exhauſerunt l. 8. ff. h.* id quod hodie ob conditionem Decurionum deficientem non invenire locum monet *Groen. ad d. l.* nihilominus ipſa æquitas ex ſua liberalitate inopi ſuccurri jubet, haud ſecus, ac patronum alimentis deſtitutum ab *Eccleſia* aliturc. 25. *x. de jure patr. Brunkmſth. de jur. patr. c. 6. n. 165. Mevar. C. ad. h. t. §. 9. Menochen.*

# TITULUS III.

# De albo ſcribendo.

Hic *de albo* (1) decurionum, *vid. L. 1. §. 1. L. 2. h.*

## *Notæ variorum.*

(1) [*De albo*] Agitur hic de Ordine inter Senatores ratione ſeſſionis & ſubſcriptionis nominum, & præferuntur hic majori dignitate, ſcilicet in eodem Collegio gaudens; Dignitas enim, quæ cum ordine Senatorio nihil commune habet in conſeſſu Senatus non attenditur. Vel qui prior in ordinem receptus, *l. 1 ff. h. t. Stryk.* Album eſt matricula, ſive tabula publica Senatorum nomina continens *l. 1. 2. h. t.*

# TITVLVS IV.

# De muneribus & honoribus.

### *Junge l. 10. C. tit. 40. & 41.*

A Munus (1) hic eſt, quod quis publicâ *authoritate* (2) ſuſcipere tenetur: *214. d. V. S. 3. §. 2. h.* eſtque * *PERSONALE, 1. pr. 18. h.* Quod perſonæ inhæ- D

ret, & expeditur corporis labore, & animi ſolicitudine, exempla ſunt in D

B *L. 1. §. f. h. L. 18. §. 1. h.* Hoc ratione finis, eſt vel * privatum, quod principaliter ad privatorum *utilitatem* (3) ſpectat, ut tutela: &c. *1. §. f. L. 18. §. 1. h. v. pr. I.*

b. *de excuſ. tut. 2. §. 2. qui pet. tut.* * publicum, quod principaliter propter publicam utilitatem imponitur: *14. §. 1. h. v. 6. §. 15. de excuſ. tut.*

C * Honoratum. ſive honores ſunt munera perſonalia, rempubl. adminiſtrandi, formaliter cùm titulo ſive gradu dignitatis conjuncta. *6. §. 3. L. 14. pr. L. 18. §. 2. h.* e. g. decurionatus, *5. de vacat. mun.* Duumviratus, defenſio civitatis, officia ædilium, &c. *12. h.* præſtantius vel viliu

c. * Inhonoratum, quod eſt ſine dignitate & honoris gradu: * præſtantiora ſunt, quæ

D magis animi ſolicitudine, quam corporis miniſterio expediuntur, & hæc aliquem

d. honorem conciliant gerentibus. * ſordida ſunt, quæ potiſſi-

 mum

ſtium corpore perficiuntur, e. g. excubias agere, 12. & c. C. de excuſ. mun. Gail. 2. O. 52. n. 7. * PATRIMONIALE ſive reale præſtatur ex patrimonio vel bonis, ab illorum poſſeſſoribus: hoc rei inhæret. 1. §. 3. 6. §. 4. e. g. tributa, 3. §. 1. [illegible]: [illegible] 5. §. 14. viarum publicarum munitio, &c. 3. C. de mun. patrim. 5. §. 11. [illegible] de vacat. mun. Tabor de munat. 2. c. 1. th. 15. * Hoc eſt vel ordinarium, quod imponitur propter utilitatem vel neceſſitatem ordinariam, * extraordinarium, quod propter extraordinariam: 2. §. 3. ff. de vacat. & excuſ. mun. un. C. de [illegible] publ. mun. hæc munera imponuntur rebus vel * ſimpliciter, abſque poſſeſſorum reſpectu, an ſc. privilegiati ſint, an verò non, an cives ſint, nec ne, [1] &c. * habito reſpectu [2] poſſeſſorum, ſc. ſi ſint cives vel incolæ 6. §. 4. & 5. L. 18. §. 21. & c. h. * MIXTUM eſt, quod perſonæ operam [7] & ſumtus requirit. 18. §. 26. 27.

*Imponunt munera*, [8] quibus hoc eſt conceſſum: 214. pr. de V. S. Sic e. g. [illegible] imponit inferior magiſtratus, cui hoc conceſſum: 6. §. 1. de [illegible]. Perſonalia munera etiam inferior Magiſtratus, [illegible] §. 2. de vacat. mun. Patrimonialia autem ille, qui habet majeſtatem. 1. §. 20. de quæſt. L. un. C. de ſuperindiƈto. 1. C. de excuſ. mun. quod tamen hodie conceſſum eſt vi juriſdiƈtionis territorialis: [9] R. I. de anno 1512. §. Und damit die Mäſſigung. Klock. de contribut. c. 4. diſtributio [10] autem horum munerum pertinet ad municipales. Cr. [illegible] Reſp. 71. n. 1. Imponuntur munera * Perſonalia civibus & incolis, (non etiam forenſibus, qui prædia ibi poſſident,) [11] 17. §. 5. & 13. ad mun. 4. C. de incol. Gail. 2. O. 52. n. 1. ſecundum proportionem geometricam, [12] 11. & ſeq. C. de excuſ. mun. in honoribus conferendis obſervatur perſonæ qualitas, [illegible], [13] facultas, & Lex municipalis: 14. §. 5. h. & honores gradatim conferuntur. 11. pr. h. * patrimonialia, quæ imponuntur poſſeſſoris ratione * non habitâ, omnes obligant, etiam forenſes: 6. §. 4. 5. L. 18. §. 21. h. Gail. 2. O. 52. e. g. refeƈtio caſtri, pontium, viarum, &c. Gail. 2. O. 52. * habitâ, tantum illis, qui ſunt cives vel incolæ, non etiam forenſibus 6. §. 5. 18. § 21. hinc onera extraordinaria regulariter forenſibus non imponuntur. dd. LL. R. I. de anno 1512. §. Dieweil aber etliche. & de anno 1544. §. Damit aber ſolche Ordnung, &c. hodiè tamen hoc non obſervatur. [14] Gail. 2. O. 52. n. 17. Evitantur munera excuſatione, &c. ut in tit. ſeq.

## Notæ variorum.

Reipublicæ [illegible] habere [illegible] munera.

(1) [illegible] [illegible] ... [illegible]

(2) [illegible]

(3) [illegible]

[illegible]

[illegible]

(4.) [illegible]

(5.) [illegible]

(6.) [illegible]

(7.) [illegible]

(8.) [illegible]

(9.) [illegible]

(10.) [illegible]

(11.) [illegible]

(12.) [illegible]

(13.) [illegible]

Per quos ... [illegible] munerum.

(14) [illegible] [illegible]

# TITVLVS V. & VI.

## De Vacatione & Excuſatione munerum, & de Jure immunitatis.

*Junge l. 10. C. t. 47.*

D C Vacatio (a) ſive immunitas eſt beneficium, quo quidem eximuntur à neceſſitate ſuſcipiendi muneris. 8. §. 2. *de vacat. mun.* Eam concedit Princeps, *L. un. C. de his, qui à princ. L. 1. C. de oper. publ. etiam credimus* (b) 1. *C. de decret. decur.* Hodie hæc poteſtas competit vi *juris territorialis*, (c) *Gylmann. Tom. 4. Symphorem. p. 1. vot. ... n. 19. Klock, de Contrib. c. 10. ſoll. 1. n. 12. ...* (*vid. 1. C. de operib. publ. L. un. C. de his, qui à princ.* Non etiam *communitatibus præſtationum* (d) *... C. ſine cauſa vel reliquis. ... Tabor. de mun. p. 5. ſoll. 2. c. 1. th. 17*) Et conceditur vel A

expreſsè per publicam Legem: *... C. de excuſ. mun.* B

privatam voluntatem, privilegium, 10. *C. eodem.* vel conventionem: de quo tamen. *vid. Klock, de contribut. c. 16. ſoll. 1. n. 5. & ... Tabor. d. l. ... ſoll. 2. c. 1. th. 14.* b.

tacitè per conſuetudinem, *5. C. de excuſ. mun. ... §. 1. de LL. ... de aq. quot. & æſtiv. ... C. quæ ſit long. conſuet. præſcriptionem*, (e) *5. C. de fund. patrim. R. I. de anno 1548.* §. Soll unſer Keyſ. Cammer-Gericht. XL. *annorum, d. L. 5. Tabor. 3. ſoll. 2. c. 1. ...* a.

propter juſtam cauſam: *L. un. C. de his, qui à princip. vacat. R. I. d. l.* Sic excuſat (1.) *ſexus à perſonalibus*, (f) *3. §. 3. de muner. & ho. R. I.* non etiam à patrimonialibus: *L. un. C. de mulierib. in quo loc. 6. C. de mun. patrimon.* (2.) ætas minor XXV. ann. à perſonalibus, *8. de mun. & hon. 2. pr. de vacat. & excuſ. 11. de decur. 2. C. qui ætat. vel profeſſ.* non etiam à patrimonialibus: *7. C. de mun. patrim.* (3.) ætas nimis provecta à perſonalibus, ſic annus LV. à decurionatu, *11. de decurion.* ann. LXX. à reliquis muneribus, *2. §. 1. de vacat. 3. de jur. immunit. §. item major 13. I. de excuſ. tut. 4.* (g) *C. qui ætat. vel profeſſ.* non etiam à patrimonialibus, *5. C. de mun. patrim.* nec ab honoribus: *2. §. ... de vacat. mun.* (4.) *corporis imbecillitas* (h) à perſonalibus: *2. §. 7. de vacat. 4. C. qui morbo ſe excuſant.* (5.) numerus *liberorum* (i) à perſonalibus, *pr. I. de excuſ. 1. C. de his, qui num. lib.* non etiam ab honoribus, *2. §. 3. de vacat.* nec à patrimonialibus, licet *ad ſint XVI* (k) *5. C. de mun. patrim. 1. C. de his, qui num. lib.* (*add. 24. C. de decurionibus, 5. §. 2. de jure immun.*) (6.) *paupertas* à (l) patrimonialibus: *10. §. 3. ... 4. §. 2. de mun. & hon.* (7.) officium eccleſiaſticum à perſonalibus. *1. 2. 33. §. 7. L. 6. C. de Epiſc. & Cler.* non etiam ratione bonorum temporalium à patrimonialibus, *18. §. 20. de mun. & hon.* (8.) *Militia* à (m) reliquis perſonalibus, *4. de vacat. 7. eodem.* idem eſt de veteranis: *4. de veteran.* (9.) dignitas Senatoria. *4. 14. C. de dignit.* Decurionalis, *21. C. de decur.* Conſilium Principum, Doctoris Juris & *Profeſſoris* (n) aliarum Facultatum, *6. C. de profeſſ.* à perſonalib. & munere hoſpitio recipiendi. *10. §. 2.* & nobiliſſimi à muneribus ſordi-

ſordidis, 12. C. de excuſ. mun. non verò à patrimonialibus: ar. §. 24. de mun. & hon. arg. 2. & 5. C. de excuſ. mun. Hodie tamen a [illegible] feudalia (14) à collectis ſunt immunia, quia eorum nomine debent præſtare ſervitia. Cz. 4. Reſp. 70. niſi ſummæ ſit neceſſitas (15) R. I. de an. 1544. §. Nemlich ſollen. Cz. 4. Reſp. 71. Plures immunitatis cauſas. v. ap. Klock de contrib. & Bocer. de collect.

C Immunes ſunt * perſonæ * ſingulares, quarum privilegium perſonam (16) non egreditur, 3. §. 6. de mun. & hon. 5. §. 2. de jur. immun. v. 6. C. de Profeſſ. nec ad

D heredes tranſit, 1. §. 1. de Jur. immunit. 13. C. de excuſ. mun. niſi aliud actum ſit, e. g. immunitas etiam poſteris (17) conceſſa: 4. de Jur. immunit. tum enim tranſit ad deſcendentes in familia, non etiam ad ſiborum liberos (18) 2. §. 5. de Jur. immunit. 13. de mun. & hon. * myſticæ, ſive collegia: hæc immunitas perpetua eſt, (19) competens tantum artificibus. (20) L. 5. §. 5. de Jur. immunit. junct. 7. §. 5. quod cujuſque univerſit. nomine.

* 10. 3. §. 1. de excuſ. arg. 6. §. 4. de mun. & hon.

O A muneribus publicis, & privatis, perſonalibus, & patrimonialibus: ab his tamen raro datur (21) immunitas, 12. de vacat. 3. C. de mun. patrim. nec data pertinet ad caſus extremæ neceſſitatis, (22) R. I. de anno 1544. §. Und nemlich ſoll & de anno 1582. §. Und demnach. R. I. de anno 1594. §. Und demnach ſollen. Cz. 4. Reſp. 72. 73.

pr. Gail. 2. O. 50 n. 26. Competens immunitas eſt allegandæ, (23) (olim eadem tacitè renunciationem tuebatur. (24) 5. §. 5. de vacat. 5. §. 5. de commun.) & quidem per appellationem: (25) 4. 7. C. de appell. à tutela tamen ſufficit ſimplex querela.

## Notæ variorum.

(1) [Vacatio] Vacatio ab Immunitate differt. [illegible]

(2) [Muneris medietati] [illegible]

(3) [Perpetua] [illegible]

(4) [Circumstantiam præstationum] [illegible]

(5) [Professionum] [illegible]

(6) [Locis à perſonalibus] [illegible]

[illegible]

(7) [illegible]

(8) [illegible]

(9) [illegible]

(10) [illegible]

(11) [illegible]

(12) [illegible]

(13) [illegible]

(14) [illegible]

(15) [illegible]

(16) [illegible]

(17) [illegible]

(18) [illegible]

(19) [illegible]

(20) [illegible]

[illegible]

# TITULUS VII.

## De Legationibus.

*Junge l. 10. C. tit. 63.*

D Legatio (1) eſt munus 14. § 12. de muneribus, publicum, 4. §. 5. h. quo quis ad negotia reipublicæ, 1. 2. §. ſ. h. 2 §. 3. de jud. Kirchner. de legat. lib. 1. c. 2. n. 7. 8. expedienda peregrè mittitur vid. Kirchner d. l. 1. c. 1. n. 6. Baſold. d. polit. c. 8. n. 3. C Mittunt jure civ. etiam inferiores & civitates municipales: Hodie (2) tantùm, qui non agnoſcunt (3) ſuperiorem, Kirchner. d. l. c. 3. de quibus hoc jus eſt communicatum, ut omnibus Statibus, (4) Kirchn. d. l. vid. Mev. ad J. L. lib. 1. tit. 1. art. 10 ſere 10 ſ. Mittuntur perſonæ idoneæ, de quibus Kirchner. d. l. c. 4. etiam inviti, 4. §. 3 h. non etiam reipubl. debitores, 4. pr. h. qui poſtulare nequeunt, 4. §. 2. nec [illegible] Kirchner. d. l. c. 4. n. 106 Paſchal. de legat. c. 20 Excuſantur propter liberos Romæ III. in Italiæ IV in Provinciis V l. C. h. propter amicitiam (5) cum eo, ad quem quis mittendus eſt. 4. §. 3. h. I Legati officium eſt, rem diligentiſſimè expedire, hinc neque propriam, neque alienam ſe debet interponere. 8. §. ſ. h. quæ legationi ſunt impedimento. 2. pr. h. nec moram admittunt 10. 11. § 2. h. neque poteſt ſubſtituere alios, niſi Jur. Rom. filium, (6) 4. §. 4. h. ſi non gratuitam (7) in ſe ſuſcepit legationem. 11. pr. h. Privilegia Legatorum ſunt, quod ſint Sancti, (8) ſ. h. 1. ad L. Jul. majeſt. Mev. ad Jus Lubec. lib. 1. t. 1. art. 10 n. ſ. ipſis ſ. n. reſtituendi omnes ſumtus, 2. §. 3. h. 18. § 12 de mun. & hon. quos non reddunt eorum liberi, parentibus ante legationem finitam mortuis (9) 10. §. 1. h.) & quæ auferuntur (10) legationis nomine, 4. h. Mev. d. l. n. 28 & per biennium (11) poſt reditum habeant immunitatem à reliquis muneribus. 7. 8. ſ. 3. C. h. An munera accipere (12) poſſit ab eo, ad quem miſſus eſt? vid. Mev. d. l. n. 3. 30. Weſenb. h.

### Notæ variorum.

(1) [Legatio] In hoc Titulo non agitur de Legatis à Principe ad Principem miſſis, quorum [illegible]

[illegible]

In hoc Titulo agitur de legatis à civitate ad ſuperiorem, [illegible]

[illegible]

[illegible]

# TITULUS VIII.

## De adminiſtrat. rerum ad civitat. pertinent.

Hæc adminiſtratio (1) eſt munus perſonale, 18. §. 3. de mun. & hon. quo quis tenetur rem civitatis pecuniariam adminiſtrare. Tenentur adminiſtratores (2) de levi culpa, (3) 2. h. non etiam de leviſſima. Mev. ad J. L. lib. 2. t. 9. ad rubric. fere in f. vid. f. §. 2. h. 2. §. 7. h. vid. 1. 2. h. rationes dolo (4) tenentur in duplum: f. §. 2. h. Rationes (5) conficere, 2. §. 2. vid. Mev. d. l. Hug. p. 1. q. 20 quæ tamen retractari poſſunt, (6) licet ſubſcriptæ & expunctæ ſint, vivente adminiſtratore intra annos viginti, eo verò mortuo, intra decem. 13. de divers. & temp. præſcr. & propter errorem calculi (7) intra XXX. ann. 8. pr. Weſenb. 1. conſil. 47. n. 30. L. un. C. de error. calc. Reſiduum præſtent cum uſuris, 5. pr. h. non etiam uſuras uſurarum. 2. §. 5. h. Plures pro indiviſo conſtituti tenentur ſinguli in ſolidum, 3. pr. habent tamen beneficium excuſſionis, (8) 3. in f. pr. h. 2. C. quo quiſque ordin. lib. 11. tit. 35 ſi tamen propter culpam collegæ quis aliquid præſtitit, tum ab illo & heredibus id poteſt repetere. (9) 2. §. 10. h. Finito officio non conveniuntur (10) ſuo nomine, f. §. de adſ. [illegible] Ca. 2. Reſp. 70. niſi proprio nomine (11) contraxerint, fidemque ſuam interpoſuerint, [illegible] §. 2. h. e. g. heredum mentionem faciendo. vid. Ca. 2. Reſp. 70.

### Notæ variorum.

(1) [Hæc adminiſtratio] [illegible] Princeps [illegible]

(2) [Tenentur adminiſtratores] [illegible]

(3) [Levi culpa] [illegible]

(4) [Rationes dolo] [illegible]

(5) [Rationes] [illegible]

(6) [Retractari poſſunt] [illegible]

(7) [Errorem calculi] [illegible]

(8) [Excuſſionis] [illegible]

[illegible]

[illegible]

ſtenti, collegæ conveniendi ſunt, cum etiam quilibet, qui propter dolum ſive culpam ſuſpectum collegam non poſtulaverit, in ſubſidium teneatur *l. 1. § 15. ff. de tut. & rat. diſtrah.* Nam collegæ in prava adminiſtratione ſuſpectum ſe invicem facere debebant, ubi ſi hoc intermittant, in damnum illorum, & per conſequens etiam in ejus reparationem conſentire videntur. *Conf. Weſenb. h. t. ch. 8. Struv.*

(9) [*Repetere*] Actione negotiorum geſtorum utili. *Struv.*

Bona adminiſtratorum ſunt hypothecata.

(10) [*Non conveniuntur*] Si ſcilicet nihil fraudulenter geſſerunt, aliàs ſi nomine civitatis contraxerint, nec pecunia in ejus utilitatem verſa, ipſos adminiſtratores teneri, notum eſt ex *l. tenetur 27. ff. de Reb. Credit. Harten. Fiſcher. p. 3. qu. 37. n. 52.* Imò bona adminiſtratorum hypothecata ſunt Principi pro rebus & pecunia adminiſtrandis vide *Ord. Proc. Magd. cap. 49. § 54. ſeq. Struv.*

Finito officio non conveniuntur.

(11) [*Niſi propriæ nomine*] Vel doloſè verſati ſint, aut fines ſui muneris exceſſerint, hinc ex mutua pecunia, nomine civitatis accepta, ſi verſio non acceſſerit, ſoli adminiſtratores, tam conſtante, quam finito officio tenentur, quæ omnia iterum naturalia eſſe, facilè liquet. *Titius.*

Neque heredes obligant, niſi illorum in ſpecie facta fuerit mentio.

(12) [*Heredem*] Aliud ergò, ſi ſucceſſorum facta mentio, ubi hæc verba, heredes contrahentium non ſtringunt. *C. C. Eccl. 2. c. 1. § 9. Struv.*

# TITULUS IX.

# De Decretis ab Ordin. faciend.

*Junge lib. 10. C. tit. 46.*

Hæc ſunt ordinationes (1) à Decurionibus, (*duabus partibus* (2) præſentibus, *2. 3. h.* & *majore conſentiente,* (3) *45. C. d. decur.*) factæ de illis, quæ *ad utilitatem* (4) & neceſſitatem civitatis pertinent, *1. h. 4. §. 2. h. obligantes* (5) membra civitatis ſcientia. *ſ. h. Coler. de proceſſ. execut. lib. 1. c. 3. n. 8.*

D

## *Notæ variorum.*

Municipia in quantum Statuta condant ex voluntate Imperantis dependet.

(1) [*Hæc ſunt ordinationes*] In quantum municipia jus condendi ſtatuta habere debeant, id ex voluntate Imperantis dependet, quæ adeò in unaquaque *Republica* ſpectari debet. Modum etiam illa conficiendi, ille determinat. Interim quamdiu aliud non declaravit, *Jus Romanum* ſequi licebit. *Titius.*

Omnes collegæ vocandi.

(2) [*Duabus partibus*] Omnes tamen vocati eſſe debent, quæ vocatio interdum per campanam fieri ſolet. *Struv.*

Pluralitas votorum, quomodo æſtimanda in electione.

(3) [*Majore conſentiente*] Quoad pluralitatem votorum notandum, quod in Electionibus ſoleat major pars intelligi reſpectu totius Collegii, v. gr. ſunt *XII. Collegæ,* quorum 5. me elegerunt, 4. *Tr.* 3. *Titium,* neuter noſtrum habebit majorem partem totius Collegii, *niſi 7.* me eligant, in deliberationibus verò ac votis judicum attenditur numerus reſpectu ſuffragantium, & ſic ſi *octo pro actore, ſex pro reo, quinque mediam ſententiam* amplecterentur, primi illi octo prævalent. *Mev. ad Jus. Lubec. l. 1. tit. 1. art. 2. n. 35. Struv.*

(4) [*Ad utilitatem*] In genere dici ſolet: Decreta valere de rebus ad *adminiſtrationem* civitati pertinentibus, quia hæc adminiſtratio à Superiore ipſis commiſſa. De aliis verò ſine adminiſtratoris non commiſſis, non valent, niſi acceſſerit Confirmatio Principis, quæ hodie ordinariè accedere ſolet. *Struv.*

Decreta Magiſtratuſ tamdiu obligant, quamdiu civitati noxia non ſunt.

(5) [*Obligantes*] Adeo, ut talia Decreta reſcindi non debeant, niſi civitati noxia appareant, *l. 5. ff. 6. 1.* Nam etiam in his obtinet limitatio, *rebus ſic ſtantibus,* vel in eodem ſtatu manentibus. *Struv.* Cæterum Decreta Ordinis pro aſſimibus agnoſcunt *Senatus Magiſtratuum* municipalium ad adminiſtrationem & ſalutem civitatis pertinentia atque publicas alterutrive juri non contraria, *arg. l. 1. l. 5. ff. h. l. ſ. ff. de coll. & corp.* Sic ſtatuta, veſtiaria, convivaria Feuer-Becker-Ordnunge / condere ipſis licet, *Zahn. Ichn. Munic. c. 27.* nec cives de eorum iniquitate apud Superiorem conquerentes, facilè audiendi ſunt, ne temerariis inter *Magiſtratum* & ſubditos litibus, obſtruatur via, & ſalva ſit Magiſtratus autoritas, querela autem ipſe potius, quam ſuperior medeatur, *Mev. p. 6. d. 70. Moerſchen.*

# TITULUS X.
## De publicis operibus.

*Junge l. 8. C. tit. 12.*

Cura operorum publicorum (1) est etiam munus publicum, & refectio muri, portæ, &c. l. 1. C. de operib. publ. Sine Principis autoritate extrui nequeunt nova opera publica, l. C. h. privato autem homini *poſſunt*, (2) niſi præbeant *[illegible]*, (3) vel monumentum [illegible]. *l. ff. h.* Muri injuſſu Principe non reficiuntur *l. [illegible] de R. D.* [illegible] (4) [illegible] poteſt quandoque opus novum *[illegible]*. (5) *[illegible]* Hi curatores ſunto diligentes, nam ſi res fuerit vitioſa facta, propter [illegible] revertuntur ad illius refectionem *intra XV ann.* (6) *l. C. h.* Si quis aliud, quam Principis nomen, operi publico inſcripſerit, committit crimen læſæ majeſt. *l. C. h. niſi ſua [illegible]* (7) id extruxerit, *l. ff. h.* Privatæ domus propter opus publicum *deſtrui poſſunt* (8) Principis authoritate, modò domino ſolvatur pretium. *l. C. h. de Pom.*

### Notæ variorum.

(1) [*Cura operorum publicorum*] [illegible]

(2) [*Poſſunt*] [illegible]

(3) [*[illegible]*] [illegible]

(4) [*[illegible]*] [illegible]

(5) [*[illegible]*] [illegible]

(6) [*Intra XV annos*] [illegible]

(7) [*Sua ſumtu*] [illegible]

(8) [*Deſtrui poſſunt*] [illegible]

# TITULUS XI.

## De Nundinis.

*Junge l. 4. C. 1. 60.*

A Nundinæ *ſunt conventus*, (1) mercatus gratiâ, publicâ auctoritate inſtituti. * Hebdomadales, die Wochen-Märckte inſtituuntur ab ipſis civibus, annonæ gratiâ, *ſine ſpeciali* (2) Principis conceſſione. *Theſaur. loc. [illegible] Beſold. th. pract. voc.* Meſſ. D

a. * Annales, die Jahr-Märckte dicuntur, quæ ſingulis annis recurrunt, ſemel, bis, D
b. ter, quater, &c. * minus ſolennes, ſive provinciales, quæ in ſpecie dicuntur Jahr- D
Märckte: inſtituuntur ab inferioribus Statibus, vi Juriſdictionis *territorialis*, (3) *Limn. de J. P. lib. 4. c. [illegible] n. [illegible]*

b. * ſolennes, ſeu univerſales *Imperatoria auctoritate* (4) inſtituuntur, ubi ex toto Imperio homines conveniunt: ut Francofurti, Lipſiæ, &c. *L. 1. ff. h. tit. C. h. Beſold. voc.* Meſſ.

His nundinis *competit privilegium*, (5) quod durantibus nundinis perſonæ vel res eorum, qui convenerunt mercatus gratiâ, illic non poſſint detineri, vel in jus vocari *ex cauſa civili privata*, (6) *L. un. C. h. Cz. [illegible]* (niſi ſint *de fuga ſuſpecti*; (7) [illegible] *quæ in fraud. Cred. Borl. [illegible] Mev. de arreſt. c. 11. n. 17.*) neque *propter contractum* (8) in ipſis nundinis celebratum. *arg. L. un. C. h. [illegible] de publ. in rem. act. [illegible] de leg. præſ. Cz. [illegible] Bach. ad W. h.* (*Diſſ. Weſemb. [illegible] Mev. de arreſt. c. 11. n. [illegible]* propter. [illegible] *de judic*) Hoc privilegium hinc inde extenſum eſt ad minus ſolennes: non etiam ad *hebdomadarias*. * (*Diſſ. Zahn. de [illegible]*) *Cz. [illegible]* Illud excludunt *commeatus* [illegible] alicujus cautione fua ipſam. *Mev. de arreſt. c. 11. n. [illegible] Cz. [illegible]* & Præſcriptio X. annorum, ſi ſc. civitates has nundinas non *inſtituerunt*, (9) *[illegible] Weſemb.* (10) *h. [illegible]*

### Notæ variorum

Nundinæ. Mercatus. (1) [*Nundinæ ſunt conventus*] Alii per *Nundinas* intelligunt [illegible]

[illegible]

Jus Stapulæ. (2.) *Jus Stapulæ*, quod [illegible] ([illegible] Stapel-Güter [illegible]) [illegible]

Jus Emporii. [illegible] (3.) *Jus Emporii*, quod [illegible]

[illegible] (3) *Jus Conductus*, quod [illegible] Jus Conductus.

[illegible]

[illegible]

(2) [illegible]

(3) [illegible]

(4) [illegible]

(5) [illegible]

(6) [illegible]

(7) [illegible]

(8) [illegible]

27. Sunt alii in Legnis, ob [illegible] conditionem, & ut legata in [illegible] [illegible] l. 25 d. l. de judic. ibi: [illegible] Berger.

(9) [Ad Hebdomadarum] Petit Carpz. d. Dec. 23. Privilegium [illegible] nundinas à Caeſare conferuntur, ſed dubium non eſt, quin id ad alias etiam concedi queat, dummodo Dominus Territorialis hoc velit, de hujus adeo voluntate nemo erit qui dubitet, uti quidem experientia confirmat, quod ad hebdomadarias illud non pertineat, nec [illegible], ad illas hoc extendere, cum [illegible] illae ſint frequentes, adeoque [illegible] privilegium oppidò moleſtum [illegible]. Titius. [illegible] non debet, quia [illegible] Imperii Nundinas [illegible] privilegium l. un. [illegible] Territorio ſuo largiri queant. Confer [illegible] Menchen.

Privilegio nundinarum [illegible]

(10) [Annumeratur] Modo hoc non fuerit generale, ſed [illegible] [illegible] Daß er ſich der Marckt-Freyheit begeben Carpz. p. 1. c. 30. d. 27 [illegible] [illegible] Berger. [illegible]

[illegible] publicum arg. l. 3. §. 5 de her. [illegible] perſonis & loco nundinarum ob [illegible] arg. d. l un. Carpz. p. 2 c. 30. def. ult. (2.) in eo loco, per quem mercatores ad nundinas [illegible] & apud nos ob res vendendas, deportantur, uti obſervatur apud Carpzovium ad dict. Conſtitut. d. 28. Mevius ad d. l. n. 9. Ceterum generaliter l. un. C. de nundin. & Tabularum privilegii à Maximiliano I. [illegible], contrarium ſtatuere convenit, quam recte quoque Chriſt. V 5. Dec. 99. n. 5. (3.) ſinem per [illegible] [illegible] nundinarum. Carpz. d. C. d. 28 [illegible]

(11) [Non ſuſtinetur] Modo occaſionem [illegible] nec bello, aut peſte impedito. [illegible] [illegible] ut novo vendatur in vicinis [illegible], non habet, niſi jus prohibendi ab Imperatore [illegible]. Gail. 2 Obſ. 69. n. 24. Myſer d. C 52 § 8 Berger.

Privilegium nundinarum per non uſum [illegible]

(12) [Pol. Weſemb.] [illegible] [illegible] Jus Nundinarum [illegible] 32. annorum. Nam hoc generale eſt. Quaecunque jure communi [illegible] longo tempore [illegible] jure [illegible], ſive 32. annos [illegible]. Berger.

# TITULUS XII.

## De Pollicitationibus.

A Pollicitatio (1) eſt ſpontaneum offerentis promiſſum. vid. Grot. de J. B. & P. lib. 2. c. 11. D

* Nudæ ſunt, quæ non acceperunt vim ac poteſtatem efficaciter obligandi, ut ſunt, quæ privatis facta ſunt; (2)

a. * Legitimæ ſunt, quæ ex ſpeciali Legis approbatione vim acceperunt legitimè obligandi, ita, ut promiſſor obligetur, & alteri Jus acquiratur ad promiſſum exigendum: ut ſunt, quæ factæ ſunt reipubl. aut Deo; hæc in ſpecie dicuntur vota (3) 2. §. 1. 2. h. illæ pollicitationes in ſpecie. D

Cauſa efficiens eſt voluntas promittentis ſpontanea, 6. §. 3. à præſente ſignis declarata, 1. pr. 3 h. & ſpecialis Legis approbatio: Promittunt omnes, maſculi & fœminæ, 2. §. 2. qui donare poſſunt, niſi ſit ſpecialis ratio. 3. §. 1. h. Promittitur Deo, & reipublicæ, etiam civitati municipali, (4) 3. §. 1. L. 8. 14. h. quod extenditur ad omnia corpora licita. arg. 19. f. C de SS. Eccleſ. Res omnis in commercio: 2. §. 1. h. Facta omnia licita. 6. §. 5. L. 8. 13. Forma eſt ut in D. & eſt ſolius offerentis promiſſio deliberata, 3. pr. h. h. e. ob juſtam cauſſam (6) (præcedentem vel futuram, 1. §. 1. h. e. 9. 1. §. 1. h. L. 4. 6. pr. 7. 8. 9. 14.) facta, vel jam jam impleri cœpta, (7) 1. §. 1. 2. 6. §. 1. h. vid. 1 §. 3. 4. 5 L. 6. §. 1. C S P O E.

B Pollicitatio * non promiſſum (8) non afficit, nec in ea Jus facit: (9) 2. pr. §. 5. h. B

b. * promiſſorem obligat efficaciter: (10) 2. pr. 3. pr. L. 6. pr. h. non tamen poteſt ad pecuniam conveniri, qui opus ſe facturum promiſit: (11) 13. pr. h.

b. * ab eo, cui facta eſt, vel ejus adminiſtratore, validè exigitur, 1. pr. 2. pr. 3. pr. 2. niſi (1.) ipſe promiſſor ad paupertatem ſe redactus, (12) tum enim quintam tantum patrimonii partem ex promiſſione opera non impleti (13) ſolvere tenetur: 9 h. (2.)

C 2. (2) Heredes autem, hereditate non suscepta liberalitati defuncti, siquidem
D pollicitatio facta est propter * honorem, quem defunctus * [illegible]
d. [illegible] * non [illegible], * si nec in-
E choaverit opus, non tenentur, [illegible] * si vero inchoa-
e. verit opus, tum heredes tenentur, [illegible], ut vel promissum impleant, vel
deficientes solvant decimam, extranei vero quintam patrimonii partem, [illegible]
* alium casum, tum liberi tenentur in decimam, extranei in quintam patrimonii
partem, [illegible]

## Notæ variorum.

[illegible]

[illegible] juramentum, ut nec verum vinculum [illegible] esse debet. Sed qua actione compellendus est ad implendam pollicitationem? Puto implementum officio judicis [illegible] *arg. l. 8. ff. h. t. vid. Tr. de A. T. J. d. §. 45. Berg.*

(11) [*de [illegible] promissis*] Aliud enim pro [illegible] cogi non potest. *Berg.*

(12) [*Ad paupertatem [illegible]*] Omnino non promisso intelligitur, [illegible] *l. 38. ff. de [illegible]. Berg.*

(13) [*In [illegible]*] Nec [illegible], si hereditatem non repudiaverint, nec [illegible] cum beneficio inventarii adierint, sic enim [illegible] hereditatis non tenentur. *Berg.*

# TITULUS XIII.

## De extraordinar. cognition. & ſi Judex litem ſuam feciſſe dicatur.

(1.) E*xtraordinariè* (1) olim cognoſcebat magiſtratus, de variis cauſis, e. g. de ſalario *Profeſſorum*, (2) Medicorum, *Advocatorum*, (3) &c. *1. pr. §. 1. 10. h. vid. 1. §. 4. 5. h.* quod hodiè *non obſervatur*, (4) *§. ſ. I. de Interdict. vid. tit. de judic.*

(2.) Judex malè judicando, h. e. judicando contra LL. mores ac conſuetudines, *litem ſuam facit*, (5) *pr. I. de oblig. quæ quaſi ex delict. pr. I. de pœn. tem. litig.* Diſtingue tamen, an judex malè judicaverit * *dolo malo*, (6) tum litem ſuam facit ejusque totam æſtimationem præſtare debet, *15. §. 1. de jud.* ad quod obligatur ex vero delicto, & quidem ſi hoc fecit * non corruptus, & judicavit contra *Jus* * *conſtitutionis*, (7) tum ſententia eſt etiam ipſo jure nulla; *2. C. quand. provoc. non eſt neceſſe vid. 7. §. 1. de condict. furtiv. Pr. Ex. 12. q. 5.* A B C

* *partis*, (8) tum ſententia ſubſiſtit, appellatione reſcindenda: *15. §. 2. ad SC. Trebell. 11. de J. & J. 27. de re jud.* * corruptus, tum ſententia ſemper, etiam quando tantum contra jus partis judicavit, eſt ipſo jure nulla, *7. C. quand. provoc. non eſt neceſſ.* & Judex litem ſuam facit, *15. §. 1. de judic.* c. b.

* per imperitiam, contra Jus * conſtitutionis, tum ſententia eſt ipſo jure nulla: *1. §. 2. de ſent. quæ ſin. appell. 2. C. quand. provoc. non eſt neceſſ.* * partis *vid. Vult. de jud. c. 12. n. 28. 1. 1. C. de pœn. jud. qui male judic.* tum ſententia ſubſiſtit, *appellatione reſcindenda*: (9) *27. de re jud.* & his caſibus etiam ad pœnam tenetur, ſi proprio motu ità judicavit, Litemque ſuam fecit & ex quaſi delicto obligatur, de quo agitur *in h. t. I. ſ. h.* Excuſatur autem, ſi ſic ex *conſilio aſſeſſorum* (10) judicavit, a. D d.

E *arg. 1. quod quisque jur.* In hoc tit. datur actio in factum, illi, qui ejusmodi ſententia læſus eſt, contra judicem *ex imperitia* (11) malè judicantem, ad id, quod judici æquum fuerit viſum *pr. I. de obl. ex quaſi del. I. ſ. h.* Quod *hodiè non obſervatur*, (12) *Vinn. ad pr. I. d. t.*

### *Notæ variorum.*

(1) [*Extraordinariè*] H. e. Cauſâ ſummariè ſine ſolemni proceſſu expediebantur. *Berg.* Judiciorum *Romanorum* diverſitas ad jurisprudentiam curioſam pertinet, vid. POLLET. *hiſtor. for. Rom. l. 2. c. 10.* REVARD. *Conjectan. l. 2. c. 10.* Ea tamen utilitas adhuc ſupereſſe cenſetur, quod ex iſto extraordinariorum judiciorum diſcrimine, cauſis ſummariis & ordinariis [illegible] aliquo modo hodie quæratur. Sed opinandum foret, ut illam judiciorum nunquam expertes eſſe Germanos, ſed potius [illegible] controverſias [illegible] ex æquo & bono, juxta [illegible] adhuc hodie decidentur, vid. *Conring. de Judic. Germ. §. 92. 97. 98. Titius.*

(2) [*Profeſſorum*] Horum [illegible] eſſe dicuntur *Philoſophi*, quia hos primum eos pro- *Profeſſores [illegible] dicuntur Philoſophi.*

[illegible]

# TITULUS XIV.

## De proxeneticis.

Proxeneticum (1) eſt ſalarium ſive honorarium, quod ſolvitur pro aliquo miniſterio præſtito, proxenetæ. Eſt autem Proxeneta, qui in negotiis conciliandis [illegible] miniſterium ſuum accommodare ſolet: Carp. [illegible]. Hodie eſt vel * publicus, publica auctoritate conſtitutus, juratus Struv. de proxen. [illegible] vel * privatus, qui privata auctoritate hoc officio fungitur. Prohibentur, qui

qui propter publicum munus privato negotio accedere nequeunt, ut decuriones, milites [illegible] Adhibentur in [illegible] apprime, ut contractibus, propter [illegible] Procuratorem [illegible] gaudent [illegible] [illegible] fenduntur tamen [illegible] propter [illegible] vel [illegible] apud Struvi. de procurat.

## Notæ variorum.

[illegible]

[illegible]

# TITULUS XV.

## De cenſibus.

Cenſus,(a) das Steur Buch eſt liber,(b) in quo cives, illorumque bona inſcribuntur, de quo vid. Klock, de contribut. c. 17. per tot. Hic inſcribuntur non tantum bona irrevocabiliter propria, ſed & revocabiliter ad aliquem ſpectantia, qui fructus inde percipit,(c) ut dotalia,(d) quorum nomine maritus præſtat onera patrimonialia, [illegible](e) [illegible] de uſufruct. L. [illegible] de uſu & uſufr. leg. Emphyteut. & pignora, cum jure antichreſeos, & generaliter omnia, ex quibus quis fructus percipit: [illegible] modò non præſtet, ut coloni,(f) inquilinus. Klock. d. l. [illegible]

### Notæ variorum.

(a) [Cenſus] [illegible]

(b) [Eſt liber] [illegible]

*Laus & honor ſoli, Maxime* CHRISTE, *tibi.*

FINIS.

# Lectori benevolo ſalutem dicit JOHANN. GODESCALC. CLAUSING, J. U. D.

Abſoluto ſic, divino auxiliante Numine, Commentario ad Compendium tit. *Schuzio Lauterbachianum*, non opus erit vino per ſe vendibili hederas ſuſpendere; ſiquidem nulli dubitamus, quin omnes juris cultores, ſive in ſcholis verſentur, ſive inter forenſes ſtrepitus ambigua cauſarum fata dirimant, hic, quæ palato arrideant ſint deprehenſuri, hancque ob cauſam maxime ſtudioſa pubes habeat, de quo ſibi gratuletur, quod ſc. difficultates illas, quæ ſummos etiam viros ad diſſuadendum hoc Compendium juris tironibus moverunt, impoſterum valeat ſuperare. Quia verò hic labor inſtar theſauri abſconditi futurus, niſi indice rerum & verborum locupletatus compareret, igitur hoc adminiculo illum inſtruendum duximus. Utere his Lector pro tua humanitate, & quæ humanitus acciderunt, humaniter ignoſce.

Vale!

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-- inter ſe non ſuccedunt n. 16 p. 979

Affinitas eſt proximitas perſonarum inter uxorem & mariti conſanguineos, & maritum ac uxoris conſanguineos juſtis nuptiis contracta 1. p. 974

-- morte perimitur n. 50 p. 417. n. 57. p. 1021

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-- vera per ſponſalia ſola non contrahitur 1. p. 974 habet tamen ſuum effectum n. 14 p. 978 n. 50 p. 985.

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-- propriè non habet gradus, ſed ejus genere Jure Canonico cognitam 1. p. 975.

-- naſcitur ex conjunctione corporum non animorum n. 13. p. 978

-- nuptiis eſt impedimentum 1. p. 988. etiam ob reſpectum parentelæ num. 62. p. 1004.

In affinitate iiſdem gradibus habetur prohibitum, qui in conſanguinitate num. 56. p. 999.

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Affirmatores dicuntur, qui teſtimonia aliorum affirmant n. 3. p. 683.

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Aggerum ruptoris vicinorum bona pl. ſtatuitur n. 4. p. 1569

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*Ag Al*

*Agnatio Agnatus.*

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Agricultura die ſacro licita t. p. 119. quod reſtringendum ad caſum neceſſitatis n. 18 p. 121

-- non impedienda, ſed promovenda eſt, hinc in favorem ejusdem, ipſo jure introducta eſt facultas prohibendi ne aedes ſuas altius tollat vicinus num. 11 p. 345.

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Alapam uxori impingere licitum marito videtur n. 74. p. 1005

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*Aleator.*

*Tit.* De aleatoribus t 404.

Qui ludis fortunae & [illegible], lucri cauſa dediti ſunt, aleatores dicuntur t. p. 404

*Al*

Aleatorum receptator non vindicat injuriam neque damnum tempore luſus ipſi datum t. p. 405

Aleatores arbitrariè puniuntur t. p. 405.

*Alienare.*

Alienare eſt dominium transferre t. p. 1020

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Facultatem alienandi, vel bona ſua obligandi, lex civilis adimere poteſt num. 36. p. 18.

-- praediorum minorum t. p. 83. t. p. 1084. n. 9. p. 1087. in neceſſaria alienatione, nec cauſae cognitione, nec decreto, nec ſubhaſtatione opus eſt n. 11 p. 385 quae ſint cauſae neceſſariae n. 6. p. 1086.

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-- comprehendit omnes actus, quibus dominium vel aliud jus in re in alium transfertur *ad verbo* [illegible] p. 1085

-- in potentiorem, ſub poena infamiae & amiſſionis crediti prohibita num. 1. p. 238.

Hic titulus quomodo differat à tit. Cod. ne lit. potent. n. 13. p. 239 in [*]

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Res hereditarias poſſidens illas accepto judicio non diſtrahit, niſi ſub cautione aut juſta cauſa t. p. 299.

-- rei dotalis, ſeu contra Legem Juliam, eſt ipſo jure nulla t. p. 1021

Si fiat alienatio fideicommiſſi, alienatur jure ſuo cauſa, niſi fiat ex cauſa neceſſaria v. g. ob aes alienum ſolvendum n. 3 p. 1222.

Alienatio, non nocet hypothecario n. 27 p. 1339

-- tunc fieri dicitur, quando bonis aliquid decedit n. 9. p. 1581

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*Tit. De alimentis & cibariis legatis tit.* p. 1194.

Alimenta etiam deportatis & bannitis debentur n. 27 p. 61.

-- per implorationem officii judicis petuntur n. 22 p. 64. n. 37. p. 90.

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-- nomine veniunt omnia, quae ad vitae ſuſtentationem ſunt neceſſaria num. p. 1038. 1194.

Alimenta ſunt vel naturalia vel civilia n. 27. p. 65.

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-- remiſſio ſtrictè eſt interpretanda n. 3. p. 1195

Alimenta in [illegible] deſinunt, nec ſumtus funebris huc pertinent n. 2. p. 1195.

-- ad probabilem vitae terminum ſunt praeſtanda n. 20. p. 1215.

-- ex publico praeſtantur his, qui ob munificentiam in patriam patrimonium exhauſerunt n. 7. p. 1692.

*Allegationes.*

Allegationes ſuperfluae ſunt vitandae num. p. 166.

Allegare non ſufficit, ſed allegata probari debent n. 52. p. 568.

*Al Am*

*Alluvio.*

Alluvio *t. p.* 1308

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*Alternativa, alternativus.*

Alternatio libellum ineptum reddit *t. p.* 125. exceptis certis casibus *n.* 43. 44. *p.* 131. *t. p.* 770

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Alumnus, differt ab adoptivo *n.* 23 *p.* 64

*Alveus.*

Alveus à flumine derelictus *t. p.* 1309 cui cedit *ibid.*

*Ambassiatores* vid. *Legatus.*

*Ambiguum* vid. *Dubium.*

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*Amoenitas.*

Amoenitatis promota, & utilitas promota censetur *n.* 38 *p.* 347.

*Amor.*

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*Amortizatio.*

Jus amortizandi bona die Vertilgung aus dem Steuer-Register *n.* 24 *p.* 702

*Amotio.*

*Tit.* De rerum amotarum actione *t. p.* 1035.

*L. Anastasiana.*

L. Anastasiana quando locum habet? *t. p.* 744. hujus legis summa *num.* 128 *p.* 761. *n.* 139. *p.* 762.

Lex Anastasiana cessat in venditione sub hasta *t. p.* 744. aut quando quis debi-

*An*

tum immunitum præsenti pecunia minoris emat *ibid.* cessat etiam ob qualitatem debitoris *ibid.* nec locum habet, ubi plena donatio subest: nominis enim in totum donata, etiam in totum exiguntur *n.* 38. *p.* 751. cessat in in debito certo ac liquido, utile ergo, cessionarium ex debitore ante cessionem audire, an debitum pro vero agnoscat, & contentus sit cessionem fieri *n.* 129 *p.* 761. itidem cessat, ubi quis partem in nomine habet *n.* 142 *p.* 762. & ob alias circumstantias cessat *n.* 130 *p.* 761. *n.* 144. 145. *p.* 762.

Lex Anastasiana locum habet in cessionibus & aliis titulis onerosis. Non si quis debitum alienum solvendum suscepit & à creditoribus remissionem impetravit *t. p.* 746

Anastasiana lex ac cessio tacito opponitur, agat mandatario nomine *n.* 121 *p.* 760

Legi Anastasianæ si locus, cui id quod superfluum addicendum? *t. p.* 745. *n.* 151. *p.* 762 & *seq.* *n.* 154 *p.* 763

Anastasiana lex adhuc observatur *t. p.* 746 *n.* 156 *p.* 763. Qui dicit hanc legem esse abrogatam, id probare tenetur *t. p.* 746

*Anatocismus.*

Anatocismus, nisi de eadem causa eodemque debitore intelligi debet *n.* 53 *p.* 671 *n.* 53. 55 *p.* 933

*Anatomia.*

Concessio ad anatomiam fieri debet auctoritate Principis *n.* 6 *p.* 1556 *num.* 15 *p.* 1580. *t. p.* 1650.

*Ancilla.*

De partu ancillæ furtivæ *n.* 25 *p.* 1339

*Angaria.*

Angariarum præstatio *n.* 5 *p.* 1693.

*Anima, animatus.*

Animæ hominum quibuscunque vasis vel vehementia præferri debent *n.* 12 *p.* 72.

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*Animal, brutum.*

Animalia ferrea habentur pro immobilibus *t. p.* 69. *n.* 41 *p.* 75.

Animal pauperiem fecisse dicitur *t. p.* 363 *n.* 9. *p.* 364

Animali pignorato pabulum non ministrans affligens in fabulam tenetur *n.* 27 *p.* 370

Animal venditum, si intra triduum mo-

*An*

riatur, ex vitio præcedenti mortuum præsumitur *n.* 21 *p.* 790

Animalia non delinquunt *n.* 27 *p.* 1512. Quod verò in Sodomia comburuntur, non fit in pœnam, sed in exemplum *ibid.* *n.* 49 *p.* 1598.

*Animus.*

Animus ubique respiciendus, & quæ in animo consistunt per eam declarationem admittunt *n.* 13 *p.* 1155. etiam hic conjecturis locus *n.* 6 *p.* 1381

Animi destinatio, præsumitur ex assertione, & inclusione *t. p.* 797

Qui filiofamilias credidit, absque animo tamen et periculo credit, ille non potest de peculio agere *n.* 101 *p.* 614. & ubi agitur de dominio transferendo animus contrahentium concurrere debet *n.* 20 *p.* 1013 vid. etiam *Contractus.*

Animus hostilis per se mortem meretur *n.* 19 *p.* 73

*Annona.*

Annonariæ causa credens cum illa comparefiat punit *n.* 17 *p.* 638

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*Annotatio.*

Annotatio bonorum fit absente reo *t. p.* 1575 *n.* 19 *p.* 1576 *n.* 1 *p.* 1622

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*Anti*

*Antichreſis.*

Antichreſis ſpeciem [illegible] n. 19 p. 558

[illegible] ἀντιχρήσεως *c. p.* 557

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*Antinomia*

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Apochæ ſunt quorundam ſolutorum [illegible] n. 44 p. 312.

Apochæ der Contributionen Zettule [illegible] Domino [illegible] ut [illegible] videre an [illegible] à [illegible] *obod.*

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*Appelli*

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*Apparitores*

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*Appellatio*

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Appellatio [illegible] prodeſt, niſi appellans [illegible] n. 62 p. 1663 n. 107 p. 1666 appellans [illegible] poteſt appellationi, niſi [illegible] n. 10 p. 1670

Appellans à judice, qui ſi mandaverit [illegible] ad mandatum, ſed ad ſuperiorem *c. p.* 84 n. 49 p. 92 *c. p.* 1652.

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Appellans [illegible] *c.* p. 1653 n. 39 p. 1660. [illegible] n. 23. p. 127 in [*].

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Appellatio locum habet, ſi [illegible] per ſententiam [illegible] n. 38 p. 178

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*Appellatio in quibus cauſis interjicienda non ſit*

Appellatione opus non eſt contra ſententiam [illegible] n. 24 p. 128 in [*] [illegible] n. 43 p. 1661

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*Ap Aq*

ab executione c. p. 1653 n. 42 p. 1661 nec à [illegible] n. 46 p. 1661. nec contra ſententiam in poſſeſſorio latam num. 9 p. 26[illegible] (*) c. p. 1673. nec à ſententia, quæ per oculatam inſpectionem aliter demonſtrari poteſt n. 13 p. 410. nec in cauſis funerariis c. p. 412. ſed quoad effectum ſuſpenſivum, bene tamen quoad devolutivum n. 37 p. 416 nec locum habet appellatio contra ſententiam in criminali latam Mantuæ n. 15 p. 1785.

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Apprehendere c. p. 1306.

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Aquiliana formula continens [illegible] [illegible] ad [illegible] p. 217.

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*Ar*

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Cur lex reſiſtit, ibid. confirmari nequit *n.* 3 *p.* 1052

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*Confiſcatio.*

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-- bonorum, non habet locum contra monachum *n.* 18 *p* 414
-- bonorum jure civili in inceſtu locum habebat *n* 12 *p* 1039
-- bonorum per Nov. 134 ſublata *n.* 12. *p.* 1209 *r. p.* 3643 uno caſu ad huc locum habet *n.* 56 *p.* 1599 ut in crimine læſæ Majeſtatis *n.* 21 *p.* 1585 *n.* 8 *p.* 1646
Per confiſcationem bonorum revocatur ultima voluntas *n.* 2 *p.* 1643
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*Confrontatio.*

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-- extinguit jus pignoris *r. p.* 906.
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-- jurium *n.* 106 *p.* 648
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*Conjectura.*

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*Conjugium.*

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*Conjunctio.*

De conjunctione legatariorum *r. p.* 1174. *n.* 110 & 111. *p.* 1183 conjunctio perſonarum vid. *Perſona.*

*Conjux.*

Conjux ad ſecunda vota convolans amittit proprietatem lucrorum nuptialium quæ à priori conjuge accepit, retento ſolum uſufructu & portione ſtatutaria. nec plus ipſi quam uni liberorum minimam partem habenti relinqui poteſt *num.* 21. *p.* 1114 *n.* 18 *n.* 327 vid. etiam *vidua* Inter conjuges pactum de hæreditate tenentis ſubſiſtit *num.* 84 *p.* 150 Inter



con

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Coniugibus utriuſque datur ſucceſſio ex Edicto unde Vir & Uxor n. 1. pag. 305. n. 4 p. 1257 n. 65 p. 1269

Non coniuges pluribus rebus indigent n. 57 p. 607

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Coniugum pacta inter vivos, & per ſolam ſcripturam ſuſtinentur n. 2 p 1018.

Coniuges inter ſe paciſci poſſunt num. 4 p 1019 excepto donatione n 9 p 1024

-- per teſtamentum nunquam ſecum cuidamcue, ſed pactis dotalibus ſibi conſulere debent n. 26 p 1122.

Coniux publicam ſponſalia inieres, nec tamen legitimam per conſtitutum conſummans ad mortem ſe infamat n. 15 p. 176 coniuges ſunt ſocii utriuſque fortunae c. p. 988 ad contrahendum tamen corpora ſua poſſunt n. 72 p. 1005

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*Conſervatio.*

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-- matrimonialis, diſtinctus eſt à ſponſalitio n. 22. 24 p. 979

-- legitimus eſt, qui publicè in facie Eccleſiae declaratus c. p. 986 conſenſus contrahentium & parentum hoc neceſſarius, non verò curatorum, fratrum, tutoris, nepotum, &c. *ibid.* conſenſus parentum tamen de Iure canonico *non.* p. 986 n. 22 p. 996.

Conſenſum bene aliquando Iudex ſupplere poteſt c. p. 986 n. 20 p. 995.

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Conſenſus requiritur plenus & verus, non ſimulatus, nec metu vel dolo extortus c. p. 987 n. 29 p. 997

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In iure poſitivo eſt dominium ſine conſenſu non transferri poſſe n. 61 p. 502

-- laeſi tempore culpae praeſtitutum n. 106 p. 549

-- generalis patris ſufficit ad illum obligandum ad quaecunque contractu occaſione prebit celebrandos n. 92 p. 613 n. 99 *ibid.*

-- verbis an factis declaretur, nihil refert n. 296 p. 321 n. 16 p. 680, imò fortius facto quam verbis exprimitur *ibid.*

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Malum conſilium, non debet eſſe impunitum n 7 p 401

Conſilium quid? c. p. 664 ex conſilio nemo qui illud dedit, nullum intereſſe habet n 9 p 667

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Ad alienationem bonorum Eccleſiaſticorum, Conſiſtorii conſenſus requiritur n 13 p. 72

Conſiſtoria, ſua ſibi ſacra ſibi arrogare non debent n 73 in [*] p. 95 In Conſiſtoriis ſua Epiſcopalia expediuntur n. 76 p. 95

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Conſtitutum poſſeſſorium, non dominium ſed poſſeſſionem ſolummodo efficit n 39 p 735 n 53 p. 1316

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-- innominati non obligant nisi per effectum, i. e. datione vel facto n. 35. p. 486
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p. 833. ubi plures contrahunt, quisque pro rata tantum tenetur n. 69. p. 685. n. 206 p. 851. niſi in ſolidum agendi facultas facta eſſet ib.

Contractus non mutat naturam delicti t. p.369. n. 40 p. 1609

Iniquum eſt, illum qui cum uno contra- xit, in plures diſtrahi adverſarios n. 82 p. 686.

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Contrahentes eum ſocio, ſibi poſtum ſo- cietatis exhibi curat n. 88 p. 687.

-- libellarius quid? t. p. 318.

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Contractus Sonder n. 41. p. 75 vid. Ep- ſen Wich.

-- aſſecurationis vid. *Aſſecuratio*

-- Vitalitius n. 80 p. 324. Ob incer- tum mortalitatis eventum ſuſtine- tur *num.* 25 p. 776 non multum differt à promiſſo n. 80 p. 324 vid. *plura ſub voce Vitalitium.*

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-- Mohatra n. 51. p. 594.

-- ſi ipſo jure nullus intra 30. annos agere licet n. 171 p. 718. à contractu con- ſenſuali mutuo, diſſenſu recedere par- tibus licet n. 148 p. 714

-- ad non cauſam quando reduci dica- tur? n. 6. p. 10. 12 p. 727. contractus reſolvitur ex tunc vel ex nunc *num.* 30. p. 728 n. 93. p. 782.

In dubio pro validitate contractus pro- nunciandum n. 7 p. 833.

Contrahentes ſi non fuerint ejuſdem in- tentionis ſed alius hoc, alius illud inten- dat, nihil agunt n. 20 p. 1013. In con- tractibus reſpiciendum ad id quod a- ctum eſt, quo ipſo non excluduntur quæ per neceſſariam conſequentiam inſunt n. 16. p. 731

Contractus chirographarius t. p. 420.

Jure hiſpanico non eſt perfectus contra- ctus n. 57 p. 429. ex chirographo non oritur peculiaris contractus ſed perti- net ſolum ad faciliorem probationem n. 53 p. 430

*Contumacia, contumax.*

Contumacia in proceſſu commiſſa, nun- quam ſarciri poteſt n. 1. p. 100. t. p. 109 eaque notatur Magiſtratus alias utilis conceditur n. 2. p. 109. n. 3. p. 110.

Contumacia videtur, prout gravior vel le- vior contractus Magiſtrat' iubeti n. 5. 6. in [*] p. 101 miſſio in bona n. 4 p. 110 t. p. 256 pœna contumaciæ eſt arbitraria n. 6. p. 110 contumaciter emanens, expenſas tenetur reſundere n. 27 p. 106. verè contumax non reſtituitur in inte- grum n. 58. p. 230 habetur pro con- feſſo & convicto n. 6. p. 110

Contumaciæ accuſatio eſt neceſſaria, etiam ſi reſtituentes fuerit peremtoriæ n. 29 33. p. 122. in actione de metu, ob contu- maciam non reſtituentis, fit actio mixta pœnalis t. p. 210

*Tit. Si quis in jus vocatus non ierit num.* p. 109.

*Conventio vid. etiam Pactum.*

Conventiones ſtandum n. 7 p. 4. omnis conventio vel ad alterandum, vel ad ob- ligandum pertinet n. 36 p. 18. Omne conventionale eſt uti perſonaceum n. 15 p. 533

Conventio illa ut rem alienam poſſidere li- ceat, nihil valet n. 15 p. 542.

Convictus n. 7. p. 1628

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Convivium funebre n. 54 p. 417

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Copia vidimata n. 15 p. 954.

-- auſcultata ib.

-- collationata ab ipſo Notario qui au- dientiam fecit n. 42 p. 957. de copia in Archivo cuſtodita n. 52 p. 958.

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*Copula.*

*Copula carnalis* vid. *Concubitus.*

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*Copulatio.*

Copulatio in ædibus privatis abſque di- ſpenſatione non admittitur n. 15 p. 993

*Corpus debili.*

De corpore debili ante terrarum conſtare debet n. 17 p. 1357 t. p 1578 n. 11. p. 1628

*Correlationem, corrigere.*

Correctorie textus metrum ad alia trahi non debent n. 9. p. 57.

*Correus*

Correorum uno liberato, liberatur & alter n. 26 p. 220 n. 19 p. 365 n. 39 p. 371. correorum eadem eſt obligatio n. 32.

*Cor Cre*

p. 1472 Nec inter correos debendi lo- cum habet beneficium excuſſionis n. 22 pag. 1462

Correi plures ubi ſunt, ibi quisque pro to- ta obligationem activè & paſſivè acqui- rit n. 2 p. 1470 niſi ſub clauſula ſamt und ſonders ſint obligati, n. 6 p. 1471 n. 25 p. 1473 & *ſeqq.*

*Tit.* De duobus reis conſtituendis t. p. 1468

Coſſaten oder Kathen-Leuten n. 23 p. 14.

*Credere*

*Tit.* De rebus creditis ſi certum petatur & de condictione t. p. 428

Creditor non debet cum ſacco venire in judicium n. 132 p. 155 n. 92 pag. 937 n. 20 p. 1495

Creditorum intereſt, ut bona debitorum conſerventur, dum tamen motus ſunt non ſolvendo n 76 p. 432

Creditori quomodo conſulendum, ſi ipſi opponatur exceptio non numeratæ pe- cuniæ? n. 89 p. 433 n. 104. p. 434 non tenetur pati n. 138 p. 461.

Creditor prior, poteſt id, quod poſteriori fuit ſolutum condicere n. 19 p. 518

Creditor habet electionem fori, ſi debitor plura fora habeat n. 29 p. 527

Creditori invito aliud pro alio ſolvi ne- quit n. 72 p. 546

Creditor pignoratitius à ſecundarione libe- non eſt n. 12 in [*] p. 14 pignus ſibimet naturaliter poſſidet *ibid.* Jus pignoris civiliter n. 9 p 557 n. 17 p. 1329 ſervi- tutem rei oppignoratæ vindicat t. p. 356 quam culpam in cuſtodiendo pignore præſtet? t p 555 n. 64. 65 67 p. 562.

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Creditor vendito pignore reſiduum pre- tii debitori reſtituere tenetur t. p. 555. nec debitor ratione reſidui obligandus eſt ad emtorem pignoris n. 72 73. p. 565

-- pignus vendens an ad evictionem te- neatur? n. 22 p. 905

-- pignus mala fide vendens, tenetur ad omne intereſſe t. p. 555

-- pignus non ſuo ſed debitoris nomi- ne vendit n. 30 p. 905.

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Creditor Anticheticus debet ſolvere omnis fundo pignorato annuus n. 20 p. 558.
-- antichretis conductor eſt quaſi malæ fidei poſſeſſor, habet enim cauſam à vero domino n. 21 p. 559
-- de fructibus perceptis & percipiendis rationem reddere tenetur n. 22. p. 559. quod omne extendi tum ipſi n. 23 p. 559 n. 55 p. 561 & ſeq. conſtituit ipſum creditori contractum ſub pacto retrovendendi iure, quam pignoratitium n. 159 p. 725 n. 164 p. 726
Creditores diverſarum tabernarum nomine beneficio quaſi ſeparationis n. 24. 25. p. 585
Creditor eaſdis obligationis, quomodo conſtitendum? n. 59 p. 596
Creditor in individuo ſubhaſtationis omnino præfertur. Inter creditores verò is potior eſt, cui major ſumma debetur n. 167 p. 717 Jure Saxonum diverſimodè obtinuit n. 44 p. 729
-- delinquentis nomen debitorem, cùm conditionem facit meliorem n. 154 pag. 763
-- prohibitum creditum ſuſcipiens, aliquam perdit t. p. 1044
-- poteſt eſſe creditor honorum, non verò ad bona n. 7 p. 1379.
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Cu

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Da

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*Del*

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Dominii reſervatio fortior eſt conſtituto poſſeſſorio n. 39 p. 735. n. 42 p. 1372 n. 13. p. 1406. ſed etiam periculo tunc nocet? n. 40. p. 736. dominii reſervatio non impedit perfectionem contractus n. 40 p 736.

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Dominium dividitur in vulgare vel eminens, plenum vel minus plenum, verum vel præſumtum n. 1. p. 1311. honorarium, legitimum, ſive Quiritarium 1. p. 311. n. 1. p. 1337.

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Dominium ex una ſaltem cauſa acquiritur n. 34 p. 1332.

Dominium ſemel legitimè quæſitum, abſque conſenſu meo in alium non tranſit n. 30 p. 1315.

Dominus quidquam... movere non poteſt, quæ ab alieno ... habet num. 43. p. 152.

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Dominus habet jus colligendi ſpecies 1. p. 322. n. 93. p 842. colonos n. 14. p. 47. ex eorum hereditates ſibi alicubi domanialia vindicat ibid. ſi nimium ſævit, per mandata, de non offendendo etc. cert., vel etiam planè jure ſuo privari poteſt n. 13. in [*] p 48. dominium re ſua abuti poteſt n 36 p 302. n. 90 p. 548 & p. 793. Non tenetur tamen dominus, quod ſervus opera præſtitus in corpore patitur ibid. in [***]

Dominus ne rem ſuam alienet, pacto conſtringi nequit 1. p 138 poteſt tamen alienationi rei ſuæ, pactum de non alienando adjicere 1. p. 138. n. 54. p. 147 n. 90 p. 151. Eſt enim liber moderator ac arbiter rerum ſuarum 1. p. 793

Dominum obligatur negotiorum geſtori ad indemnitatem ob impenſas utiles & neceſſarias cum uſuris, etiamſi negotium diverſum habeat eventum 1. p. 397.

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Dominus feudi ſine vetus Imperatoris à Vaſallo in jus vocari non poteſt num. p. 101. in Camera Imperiali vero hoc vinculum non attenditur, & alii volunt, dominum feudi ſemel debere eſſe dominum territorii n. 7 p. 04.

In vendendo emphyteuſi domini conſenſus requiritur, & ſi ipſe emere velit jus

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Dominus ſine directum abſque conſenſu emphyteutæ alienare poteſt n. 75 p. 321.


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Donatio [illegible] n. 42 p. 480 n. 84 p. 707 c. p. 1022 n. 1 p. 1023 1291 [illegible] c. p. 1022 n. 4 [illegible] n. 12 p. 1024.

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[illegible] n. 19 p. 1285.

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Donatio [illegible] n. 13 p. 1300.

[illegible] n. 20 p. 1301. [illegible] n. 55 p. 1302 n. 44 p. 1305.

De

*Domus.*

Fraticula domus, ſuper domum conditorum [illegible] n. 102 p. 153

*Domum.*

Domum [illegible] vel [illegible] domum.

*Dormientes* t. p. 157 n. 65 p. 148

*Dos.*

Dos ſuperer promiſſa ſolvi debuerit, non reperitur, etiamſi nuptiæ nullæ fuerint ſecutæ n. 24 p. 483 In dotem [illegible] dotem quod promiſſum erat. 26 p. 805

Solo dotis promiſſio obligationem efficacem producit n. 21 p. 1014 n. 34 p. 1015

Dotem non [illegible] qui reperitur [illegible] pro [illegible] dotem, vel in [illegible] deprehenſam [illegible] t. p. 1031

Dotis promiſſio num. 42 43 p. 145 [illegible] promiſſa non ſequuto matrimonio condici poteſt n. 14 p. 483 [illegible] prohibitum matrimonium ſiunt [illegible] n. 21 p. 484

-- dato n. 157. 143 n. 28 p. 144.

Dos ſub illa conditione datur, ſi nuptiæ ſequantur quod tamen ſolet, ſi legitimum contrahat num. 15 p. 483 n. 29 150 p. 1013 n. 47. p. 1508.

Dotis privilegium [illegible] ad heredes transit *num.* p. 34. n. 15 p. 38 vel *Heres*

Dos privilegium eſt n. 28 p. 52. *privilegium dotis [illegible], [illegible] inter conjuges eſt recepta vel. communi.*

Dotis cauſa eſt favorabilis t. p. 1008.

Dos non [illegible] per [illegible] in integrum n. 22 p. 112. n. 47 p. 120

In dote duplex [illegible] hypothecam ſc. & prælationem n. 114 p. 759 Ut hoc privilegio uxori competant, dos [illegible] debet eſſe [illegible] n. 4 p. 830 [illegible] vero per quantitatem [illegible] in præjudicium creditorum non [illegible] n. 36 p. 1371

Dotis augmentum per ſolas mariti [illegible] non ſufficienter probatur n. 27. p. 894.

Dos eſt [illegible] n. 38 p. 1157. n. 8. p. 1280

-- conſtituenda & legitima [illegible] n. 90 p. 296 Conſetur etiam quando [illegible] dotis pater [illegible] n. 70 p. 1244.

Vi. de jure dotium t. p. 1006

De

Dotis ſignificatio, [illegible] *ibid.*

Certo dotem [illegible] valere, quæ dotis cauſam non [illegible] n. 127 p. 549

Dotem [illegible] poſt [illegible] [illegible] n. 7 p. 1032.

Dotem n [illegible] dotis [illegible] eſt [illegible] n. 35 p. 756.

Dos [illegible] dotis [illegible] in maritum [illegible] n. 45 p. 1016.

Ex [illegible] dotis [illegible] eſt dotale n. 41 p. 1016

Vi. [illegible] quemadmodum dos [illegible] t. p. 1030.

Dos omnis dotem [illegible] ſunt [illegible] & acceptiſſe ſuerunt *num.* p. 1006. de non [illegible] dote *num.* p. 422.

Dotem [illegible] debeantur [illegible] n. 7 p. 1032.

Dos conſtituta & promiſſa n. 6 p. 1009

-- conſtituta n. 8 p. 1009

Dos [illegible] ab eo non poteſt [illegible], niſi hoc pacto ſibi reſervaverit n. 6. p. 1032

Dos conſtituta [illegible] *num.* p. 1007 [illegible] non conſtitueret *num. ibid.* [illegible] promiſſio an valeat? n. 30 p. 1014

Dos profectitia vel adventitia n. 9 p. 1009

-- non præſumitur niſi probetur n. 12 p. 1010 Non ſolum ob [illegible], ſed etiam [illegible] datur n. 24 p. 1012.

-- conſtituenda pro dignitate mariti t. p. 1007 n. 30 p. 1014 n. 38 p. 1015. [illegible] in dotem dari poſſunt *ibid.* quæ alienari poſſunt n. 25 p. 1014 an etiam feudalia? n. 27 *ibid.* feudalia in [illegible] & [illegible] n. 17 p. 1013 n. 11 p. 1481

-- marito datur pro ſuſtinendis oneribus matrimonii n. 14 p. 1013 n. 22 p. 1014

-- eodem ſoluto [illegible] [illegible], quo erat [illegible] primo n. 11 p. 1010

-- [illegible] n. 36 p. 1016

-- ſoluto matrimonio, marito ad [illegible] reverti poteſt n. 20 11. p. 1032 [illegible] n. 4 p. 1029.

Vi. Pro dote (ſc. [illegible] poteſt) *num.* p. 547

Dos [illegible] dicitur dotalis quia eſt loco

De Do

legitimæ, non vero dicitur ſilia dotata eſt [illegible] propter nuptias, quia hæc non eſt legitimæ loco n. 14 p. 1033.

Regulariter omnem actio pro dote repetenda transit in heredem num. 5. p. 1031. An hæc actio [illegible] locum habeat? n. 40 p. 1016

*Dotalia. Dotalia pacta.*

Vi. de pactis dotalibus t. p. 1017.

Pacta dotalia [illegible] gratis [illegible] t. p. 1017 n. 1 p. 1018.

Dotalia pacta vel per modum pacti ſunt [illegible] vel ultimæ voluntatis ſunt t. p. 1017 n. 3 p. 1018 & ſeq. Si ad modum ultimæ voluntatis ſuerint conſtituta ad [illegible] [illegible] requiruntur *num.* p. 1017 [illegible] *num.* p. 1018. Per modum ultimæ voluntatis facta, prohibere mutari poſſunt num. 3. p. 1019 n. 10 p. 1020.

Dotalia pacta ſunt [illegible], principaliter ſunt de dote & donatione propter nuptias t. p. 1017

Dotalia inſtrumenta per modum [illegible] [illegible] non requirunt teſtes *num.* 3. p. 1019. ſed ipſorum [illegible] [illegible] n. 2 p. 1018. Per quod [illegible] per hoc [illegible] dotalia inſtrumenta n. 9 p. 1020.

Vi. de ſundo dotali t. p. 1020.

Dotale dicitur, [illegible] in [illegible] dotis in maritum eſt translatum t. p. 1020

Vi. de impenſis in rer dotales factis *num.* p. 1032.

Vi. de dote profectitia t. p. 1190

*Dotatitium.*

Dotatitium [illegible] propter nuptias [illegible] n. 28 p. 1596

Dotatitium pro quantitate dotis [illegible] n. 38 p. 1015.

Dotalitium dotem abſorbet n. 40 p. 1016.

Dotalitium regulariter conſtituitur [illegible] à Nobilibus n. 49 p. 1016 In [illegible] regulariter [illegible] dotem duplicant, [illegible] quadruplicant *ibid.* Quo vero in [illegible] non habetur [illegible] n. 49 p. 1017

Dotalitium à [illegible] propter nuptias differt *ibid.*

*Dubitare, dubitatio, dubium, &*

Dubitare [illegible] pro [illegible] habetur t. p. 494.


Dub-

*Du Ec*

Dubium tam praesumitur denique *ibid.*

Dubitans incipiens post ea acquiescentes non mox in ea. fidem confirmentur. n. 92 p. 1323 dubitatio *c. p.* 973.

*Tit. de rebus dubiis c. p.* 1203.

In dubio id praesumendum, quod est aequum est *n.* 38. *p.* 245.

In dubio pro valitione contractus pronunciandum *n.* 7 *p.* 753.

In dubio contra fiscum pronunciandum. n. 231 *p.* 763. *vid. praesumtio.*

*Dotatus.*

Dotatum approbatio *n.* 27 *p.* 1330.

*Duellum.*

Duella circa Frederici II. tempora usquam diversam judiciorum in Imperio cum percussa *n.* 22 *p.* 265.

*Duplum.*

Duplum poena non homines sed prestatur in evictione. *n.* 1. *p.* 916.

*Dupondium.*

Haereditas quando fiat dupondia? *n.* 35 *p.* 1215. *vid. haereditas.*

*Dux.*

Ducis circulorum, habent jus exequendi sententias à Camera Imperiali latas *n.* 39 *p.* 92.

## *Lit. E.*

*Ebrius.*

Ebrius multa facit dum se inebriat, quae vero ebrietatem facit, in illis excusatur poenae *n.* 6. *p.* 1541.

*Ecclesia.*

Ecclesia obvenire vola superflua alienare potest *n.* 12 *p.* 72

Contra Ecclesiam non praescribitur nisi 40 annis *ibid.*

Ecclesia habet jura minorum, illorumque exemplo restituitur *c. p.* 225. *n.* 76. *p.* 281. *n.* 104 *p.* 814.

Ecclesia habet vindicationem in re. parentes sua etiam *c p* 306.

Ecclesiarum securitati quam maximè prospiciendum *n.* 10 *p.* 319

Ecclesiarum auctores cavere debent, daß aus Last- oder Pflicht-Gütern keine Erb-Zinß-Güter werden *n.* 10 *p.* 319

Ecclesia dicitur habere manus mortuas *n.* 23. *p.* 702 In ecclesiam bona transeunt acquirentes, esse contra manfestis penitus velit *n* 24 *p.* 702.

Ecclesia in dubio minor jure communi *n* 24 *p.* 1370.

Ecclesiae vetus dictum illa, quae ad primi-

*Ec*

ventium Papae, sive ad sedem Papalem pertinet. *n.* 51 *p.* 2104.

Ecclesiarum aedificatores adipiscuntur jus Patronatus *n.* 7 *p.* 1702.

Ecclesiae ministri vid. *Clericus.*

*Edere.*

*Tit. de Edendo c p.* 123.

Edere est designare *c. p.* 123 *n.* 1 *p.* 126. edicione loco est communicatio copia libelli *n* 2 *ibid.*

Editio mandatur à Magistratu *c. p.* 125 si fuerit poena *ibid.* In officio tamen judex editionem instrumentorum impetrare potest *n* 57 *p.* 132.

Editionem petentis, interesse debet *n.* 58 *p.* 132 quod probandum est *n.* 59 *ibid.*

Actor edere debet ad instruendum reum *c. p* 125 ut deliberet an cedere, an contendere malit *n.* 63. 64. *p.* 132

Editio sit sumptibus petentis *c. p.* 126 *n.* 76 *p.* 133

Editio est juris contra *n.* 52 *p.* 131 ex quasi contractu *n.* 56 *p.* 132.

Edere nullus, jurat, se non possidere, nec dolo desiisse possidere, sin si reus si instrumenta habentur pro editio & recognitis *c. p.* 126 *n.* 77 78 *p.* 133. *n.* 79. *p.* 134.

*Edictum.*

Edictum *Aedilitium* vid. *Aediles.*

Edictum Brandenburgicum contra sponsalia clandestina *n.* 30 *p.* 982 *n.* 38 *p.* 99, *n.* 27 *p.* 997

Edicta Principum *c. p.* 33 à mandatis differunt *n.* 1 *p.* 35.

Edicta Praetorum primum fuere annua postea perpetua *c. p.* 19. & *n.* 93. in (*) *p.* 97.

Edictum perpetuum *Salvius Julianus* jussu Hadriani collegit *c. p.* 20 & *n.* 8 *p.* 23 24.

Edictum D. vi Hadriani locum habet, ubi Testamentum vitio visibili vitio laborat *n.* 101 *p.* 1182

Edicti alicujus beneficio uterus, et ejus poenam non incidit *c. p.* 98.

Edictum successorium vid. *successio.*

Edictum *unde Vir & Uxor n.* 1 *p.* 305

Edictalis citatio, vid. *Citatio.*

*Educare*

Pupillus ubi educandus? *c. p.* 1074.

Educatio constitui in alimentorum praestatione, & probis educationis *c. p.* 1074.

*Ef*

*Effectus.*

Effectus sublata causa non semper tollitur *n.* 69. *p.* 191.

*Effestucatio.*

Effestucationis idem est effectus ac resignationis *n.* 27 *p.* 505.

*Effractores.*

*Tit. de effractoribus & expilatoribus c. p.* 1563.

Effractores coercio *c. p.* 1563.

*Effundere.*

*Tit.* De his qui effuderint vel dejecerint *c. p.* 173.

*Egenus.*

Egenis ex officio Advocati constituuntur *c. p.* 165 qui gratis patrocinium praestare tenentur *c. p.* 167. obtenta verò causa honorarium capiunt *n.* 50 *p.* 172.

Egenus tenetur praestare juramentum paupertatis *n.* 49 *p.* 171 ad quod non admittitur si decretum provisionale impetraverit *ibid.*

Egeno ex lege charitatis aliquid usuris moratam dandum *n* 11 *p* 927 nisi pecunia terreno accepta negotiari vellet *ibid.*

Pauperes commiserationem quidem, non vero privilegium merentur in delictis *n.* 26 *p.* 1570.

Egens non excusatur, quia praesumuntur corrupti *n.* 11 *p.* 1576.

Egenus nocui emergentes & bonis moribus propulsione, divisi profundi possit *n.* 6 *p.* 1691.

*Electio.*

Minori competit electio, an velit restitui an ordinariè agere *n.* 5 *p.* 205 *c. p.* 223 *n.* 18 in (*) *p.* 227

In vi compulsiva electio est salva, an alteriorem vim pati, an verò id facere velit *n.* 5 *p.* 211.

Electio mala, est species culpae *n.* 64. *p.* 562 *n.* 19. *p.* 568.

Electio in emtione venditione nunquam perimitur *n.* 5 *p.* 792.

*Elector.*

Elector in electione Imperatoris, sibi ipsi votum dare potest *n.* 7. *p.* 195

Elector post annum 18 reputatur administrans *c. p.* 223.

Elector Saxoniae conveniatur bey dem Ober-Hof-Gericht zu Leipzig *num.* 11. *p.* 105

Electorum gaudent jure de non appellando & non

*El Em*

[illegible] non [illegible], hoc tamen non [illegible], quo [illegible] propter [illegible] [illegible] [illegible] ad [illegible] Imperatoris [illegible] possint n. 5. p. 199. t. p. 1652. n. 29. p. 1660.

[illegible] [illegible] quando [illegible] de non appellando [illegible] [illegible] n. 30. p. 1660.

[illegible] Ecclesiastici in [illegible] Imperatoris, [illegible] [illegible] n. 29 p. 449.

[illegible] [illegible] non habet [illegible] [illegible] t. p. 1562.

*[illegible]*

[illegible] [illegible] in [illegible] [illegible] n. 14. p. 1314.

*Emancipatio.*

Tit. De Adoptione & Emancipatione tract. pag. 60.

Emancipatus à patre adoptivo non [illegible] [illegible] t. p. 60 [illegible] in patre [illegible] n. 13 p. 62.

Adoptando [illegible] pater ad emancipandum [illegible] potest n. 15 p. 66.

Emancipatus non [illegible] [illegible] [illegible], [illegible] [illegible] [illegible] potest n. 10 p. 994. n. 28 p. 997.

Emancipato pleno jure [illegible] bona [illegible] n. 56 p. 606. [illegible] amplius [illegible] habere n. 111 p. 15.

Tit. De [illegible] [illegible] [illegible] [illegible] t. p. 1146.

Emancipatio [illegible] [illegible] est t. p. 62 [illegible] [illegible] [illegible] [illegible] n. 38 p. 64. [illegible] [illegible] non potest n. 19 p. 64. [illegible] [illegible] [illegible] [illegible] [illegible], quae [illegible] ad [illegible] *ibid.* [illegible] fieri debet [illegible] [illegible] [illegible], [illegible] [illegible] JCtorum [illegible] n. 36 p. 66.

Emancipationis [illegible] [illegible] [illegible] n. 34. 38 p. 66 n. 4 p. 232. de [illegible] [illegible] n. 16 17. p. 317.

Emancipatio non [illegible] per [illegible] n. 35 p. 977.

[illegible] [illegible] [illegible] [illegible] [illegible] potest n. 37 p. 1104.

Emancipato est [illegible] [illegible] n. 3. p. 232.

Emancipatio [illegible] per [illegible], & [illegible] [illegible] [illegible] n. 24 p. 1014.

Emancipatus [illegible] non [illegible] [illegible]

*Em*

[illegible], [illegible] [illegible] [illegible] [illegible] t. p. 1107.

*[illegible]*

[illegible] est [illegible] [illegible] n. 184 p. 759.

*[illegible]* ad [illegible] p. 1040.

*[illegible]*

[illegible] [illegible] [illegible] n. 58 p. 994.

*Emphyteusis*

Tit. Si ager vectigalis i. e. Emphyteuticarius petatur t. p. 315.

Emphyteuticarius [illegible] t. p. 315 [illegible] n. 52. p. 147. n. 14 p. 319. [illegible] [illegible], nec [illegible] [illegible] [illegible] t. p. 316. [illegible] [illegible] [illegible] [illegible] [illegible] *ibid.*

Emphyteusis non [illegible] [illegible] t. p. 122 n. 12. 10 [*] p. 114. t. p. 317.

Emphyteusis [illegible] de rebus [illegible] & [illegible], [illegible] in [illegible] de [illegible], [illegible] [illegible] est [illegible] [illegible] t. p. 316.

Emphyteusis per [illegible] [illegible] [illegible] t. p. 317.

Emphyteusis [illegible] [illegible] [illegible] à [illegible] & [illegible] non [illegible] [illegible] à Zenone [illegible] [illegible] t. p. 3 6 n. 8 p. 319. n. 15 p. 319.

Emphyteuticarius [illegible] [illegible] [illegible] t. p. 306. & [illegible] [illegible] [illegible] [illegible] t. p. 317 n. [illegible] & ager vectigalis p. 319 n. 45 p. 322.

Emphyteusis [illegible] [illegible] [illegible] [illegible] n. 31 p. 322.

Emphyteuticarius [illegible] [illegible] est, [illegible] [illegible] & [illegible] [illegible] [illegible], [illegible] [illegible] [illegible], [illegible] [illegible] [illegible] t. p. 314 [illegible] [illegible] [illegible] & [illegible] [illegible] t. p. 317 [illegible] [illegible] *ibid.* ob [illegible], vel [illegible] [illegible] non [illegible] à [illegible] t. p. 316. [illegible] [illegible] [illegible] n. 60 p. 323 [illegible] [illegible] potest, quando [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] t. p. 770. n. 31 p. 781 [illegible] [illegible] [illegible], [illegible] [illegible] n. 21 p. 320.

In emphyteusi [illegible] [illegible] n. 22 p. 968.

*Em*

In emphyteusi [illegible] [illegible] [illegible] potest t. p. 316.

Emphyteusis [illegible], [illegible] [illegible], [illegible] [illegible] [illegible] t. p. 315.

Emphyteusis est [illegible] vel [illegible] t. p. 316 n. 5 6. 7 p. 319. in [illegible] emphyteusi Ecclesiastica [illegible] [illegible] n. 10 p. 319. [illegible] [illegible] non [illegible] n. 31 p. 322.

Emphyteusis non [illegible] [illegible] est, [illegible] [illegible] [illegible] n. 1 p. 318. Jus emphyteuticarium t. p. 317 ad [illegible] [illegible] [illegible] *ibid.* [illegible] [illegible] [illegible] [illegible] *ibid.*

[illegible] emphyteuticarius [illegible], [illegible] [illegible] potest n. 32 p. 321.

Emphyteusis non debet [illegible] n. 9. p. 320 Jus emphyteuticarium [illegible] [illegible] [illegible] [illegible] [illegible] t. p. 317 n. 19 p. 320. [illegible] [illegible] [illegible] in [illegible] non [illegible] n. 30 p. 321. [illegible] [illegible] [illegible] [illegible] [illegible], & per [illegible] [illegible] [illegible] *ibid.*

Dominus Emphyteutam [illegible] recipere [illegible] t. pag. 317. [illegible] [illegible] [illegible] [illegible], [illegible] [illegible] [illegible] [illegible] *ibid.*

In vendenda emphyteusi, dominus [illegible] jus [illegible] t. p. 319.

Emphyteuta [illegible] [illegible] emphyteuticam à [illegible] [illegible] hypothecam [illegible] potest *ibid.* [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] emphyteusis n. 34 p. 321 [illegible] [illegible] [illegible] & [illegible] [illegible] *ib.*

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[illegible] p. 704.

[illegible]

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Fiſcus utitur jure creditoris n. 19 p. 1073. n. 22 p. 1674.

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Fiſcus ſuccedens, legata & fideicommiſſa praeſtat n. 2. p. 1164. & reliqua onera hereditaria n. 79 p. 1271. nec non debita ſolvit n. 3 p. 1673

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In quibus agri privatorum ſunt deſcripti n. 22. p. 882.

*Foemina.*

Foeminae in dubio pari cum maribus jure utuntur n. 24. p. 50. deteriore condi-

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tionis quam mares t. p. 43. homines tamen tamen ſunt participes n. 21 in [*] p. 51 ob imbecillitatem ſexus ut ha privilegio gaudent aliud, exceptis ratione dotis, ut ſunt indotatae n. 31 p. 627 jus ſaepius ignorant n. 21 in [*] p. 51. non obligantur ex fidejuſſione n. 36. p. 18. gaudent SCto Velleiano t. p. 612 niſi pro ſuo creditore intercedant t. p. 623. merent commiſerationem, quam maſculi digna n. 21 in [**] p. 51 & ſaepe mitius puniuntur n. 51 p. 1508. n. 26. p. 1512 purgationem ſupplicii deſerventur n. 25 in [*] p. 52 prius torquentur, quae tutum conſilium praeſumuntur n. 21 p. 52. n. 85 p. 455. recte verò poſt maſculos. quae tutius peccatum praeſumuntur n. 85. p. 455 n. 71 p. 1631. nec tamen in eo necem, in omnia docere, quam in maſculis requiritur n. 21. in [**] p. 52.

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Foeminam eſſe dominam, publicè monſtrari n. 6 p. 1020.

Foeminae liberos non habent in poteſtate, in ſolatium tamen amiſſorum liberorum adoptare poſſunt n. 9. p. 62.

Foeminae dotatae in perpetua cura ſunt n. 73 p. 190. nec ubique conſenſu curatoris alienant n. 9. p. 1022 ad actus ultimae voluntatis tamen curatorem non adhibent n. 20. p. 1300.

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Quatenus foemina non laedere, ſed potius alterum laeſare eſt, ratio non indiget curatore n. 15 p. 654.

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Foemina mercatrix n. 73. p. 190. n. 70 p. 631. In rebus ad commercium pertinentibus obire negotium, & ubique conſenſu mariti & curatoris obligatur n. 17 p. 236 etiam in Saxonia n. 10 p. 700. ſublevar eſſe poteſt n. 22 p. 570 & habere tutori praeſentem quaſi uſſum ſe n. 38 p. 605.

Foeminarum judicatum infirmitas variantur caputibus ſuppoſitum eſt n. 18 p. 994

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& temperamentum mentorum n. 70 p. 631 ubique eorumque in judicia non agunt t. p. 253. non poſſunt judices eſſe, niſi habeant jurisdictionem patrimonialem t. p. 214. n. 74 p. 269.

Foeminarum intercessiones ſunt ipſo jure invalidae n. 3 p. 624 n. 20. p. 627 nonne igitur per SCtum Velleianum enervandae? n. 19 p. 626. intercessiones tamen interceſſio foeminam obligat n. 12. p. 1022

Foeminam facilius ſolent eſſe ad contrahendum, quam donandum n. 18 p. 626 hinc à ſola fidejuſſione, non ab aliis contractibus arcentur n. 17. p. 626.

Foeminae illuſtres ordinarias jura beneficia utuntur n. 7 p. 625.

Foeminae ſunt avarae n. 29. p. 627. tempore quaeſtionis ſunt infames t. p. 172. n. 10 p. 175.

Foemina pro alio ſolvere poteſt, ſi id libere ſciat n. 30 p. 627.

Foeminae regulariter ſolum particulam docti tranſeunt dare n. 85 p. 956.

Foemina in bonis mariti ad bona non habet ſemper hypothecam n. 9. p. 898

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Tit. De mutuo foenore t. p. 938.

*Fons.*

Tit. De fonte t. p. 1409.

Qui ſolus fontem reficit, reliquos pro rata ad refundendas expenſas compellere poteſt n. 1. p. 1409.

*Forenſis.*

Forenſis eſt, qui in eadem civitate non habet domicilium n. 37 p. 18 n. 23 p. 1689 vel qui forum hic non ſortitur n. 28. p. 702

Forenſis, exceptione fori ignoratio, à poena liberatur n. 37 & in [*] p. 19.

Forenſibus bona immobilia vendere, non ubique eſt permiſſum t. p. 688. idem in ſtatutum, ut neque tamen abſque aliud.

*Forma.*

Forma dat eſſe rei, hinc partium contra formam humanam edens, liber t non annumeratur n. 23 in [*] p. 52.

Nullus contractus ſine forma eſſe poteſt n. 29 p. 44 formae praeſcriptae, praeterire ex hiſce niſi n. 7 & in [*] p. 283. n. 14. p. 922 n. 18. p. 1403.

Formae actus per juramentum non ſuppletur n. 11 p. 1340.

Forma in utique adhibetur n. 25. p. 365.

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quæ ratio in valuatione habetur n. 48. p. 372.

*Formula.*

Formulæ aliquæ c. p. 19. ex ſtylo curiæ judicum ſedes petiitur ad formulas ad ſtrictè gerendas n. 49 p. 1430 Introductæ, ut promiſſa e inſtrumentis aliquæ n. 2 p. 22 illis non obſervantes, cauſa caderent ibid. à Conſtantino ſunt ſublatæ ibid. n. 27 p. 90.

Formulæ ex ſtylo Notariorum negotiis adjectæ, pro non ſcriptis haberi ſolent n. 31. p. 1302.

*Fornicatio* c. p. 1589.

Forſt-Gericht ſörſtliche Obrigkeit n. 80. p. 95

*Fortalitium.*

Fortalicii extructio ad munitionem vicinis, non eſt permiſſa n. 4. p. 1702.

Statuum Imperii privilegium circa extruendo fortalitio n. 5 p. 1702.

*Forum.*

Forum competens eſt, vel ratione domicilii, vel contractus, vel delicti, vel rei ſitæ, vel dependens &c. c. p. 225 & ſeqq. n. 92. in [*] p. 272 n. 101 p. 272. n. 1. p. 399. forum originis, conditionis, quando quis domicilium aliud non conſtituit n. 85 p. 1272.

Competentia fori quandoque non attenditur c. p. 257.

Non omnis fori mutatione eſt prorogatio n. 61 p. 93. vid. renunciatio.

Cauſæ ſingulare forum habentes vid. ſub voce cauſa.

Forum privilegiatum habent viduæ, pupilli, diuturno morbo ſonſici &c. c. p. 258 Clerici, Profeſſores, Milites, Studioſi n. 154. 155 156 p. 278 n. 126 p. 275. Cortiſani Principum n. 160. p. 279. Item ibid. Aſſeſſores & Procur. Cameræ Imperialis n. 161 p. 279. Datur etiam forum Arreſti, vid. Arreſtum. Item forum Auſtregarum n. 162 p. 279. vid. Auſtrega.

Fori electio per eos quorum ſit & debeat ploratſo ſora habent? n. 29. 31 p. 527.

*Frater*

Inter germanos & conſanguineos, non utrumque tituo habet quatenus fratri ſuccedit inteſtato, quando ex ſimplici levitate materiis perſona ſunt primo ſect. c. p. 283 n. 4. p. 287. n. [illegible] o. p. 388. Germani non liberi, ſi ſuccedunt fratri in capita ſucceduntur n. 59 60 p. 1266.

Fr

Fratres uniliterales damnum deficientibus Germanis cum ... liberis ſuccedunt. Der halbe Geburt tritt ein Glied weiter n. 61. p. 1268.

Fratres legitimati per ſubſequens matrimonium, cum germanis ſuccedunt n. 62. p. 1286.

In Saxonia patruus excludunt fratres ab inteſtato n. 19 p. 289. n. 29 p. 605. n. 58 p. 1266.

Quacunque ratione fratribus in teſtamento aliquid relinquere ſufficit n. 61 p. 293. n. 71. p. 294.

Frater fratrem de jure naturæ alere non tenetur n. 67. p. 294.

Frater ex bonis vero fratris nullum jus habet n. 63. p. 1266. Sororibus germanis & conſanguineis datur conſtitutum n. 27 p. 1013. Minor præſumitur eſſe favor erga fratres, quam extraneos n. 78 p. 295

Fratres regulariter ad teſtimonium admittuntur c. p. 963. Cogi tamen non poſſunt n. 46 p. 967

Si quis fratribus aliquid diligens, redit ſub appellatione fratrum liberi indicantur n. 6 p. 1211

*Fraus.*

Fr. Quæ in fraudem creditorum facta ſunt, ut reſcindantur c. p. 1379.

Per fraudem aliquid quod exprimatur, eſt quandam ſpecies fori mandati n. 2 in [*] p. 203

In fraudem legis ad obviandum, quæ cum una via prohibetur ſunt, alteri via non debent concedi n. 15. p. 211.

Fraus nulli ſuffragari eſſe debet num. 9. p. 668

*Fructus.*

Fructus ex rebus in vitium ſanctum conſecratis, ad vitricum pertinent n. 1. p. 1416.

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Fructus naturales ad uſuſructuarium pertinent, non induſtriales n. 80. p. 936.

Fructus percipiendi veniunt, qui revera quidem non ſunt percepti, percipi tamen potuiſſent n. 81 p. 936.

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In fructibus percipiendis reſtituendis alia eſt conditio poſſeſſoris b. f. alia mala, vere n. 42. p. 311.

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Fructus legatorum uſurarum modum excedentes, ſorti imputantur n. 22 24. p. 559.

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Fructus pendentes vel in herba conſtitutos cum poſſunt c. p. 689. quod nec in ordinatione politica de anno 1577 ſimpliciter prohibetur ibid. n. 30 p. 703.

Si fructus venerunt, in dubio res cum eis ſcruit c. p. 689.

Fructus loci denotant omnem utilitatem, quam quis ex re vel occaſione rem percipit. Strictè & propriè vero omne emolumentum, quod ex ipſius rei corpore oritur, (ſeu fructus) arborum ſignificat c. p. 925

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– – à fundo ſeparati ſunt res mobiles n. p. 68.

Fructus pendentes ſunt res immobiles c. p. 69. n. 70. p. 809 n. 169. p. 848. pendentes & extantes b. f. poſſeſſor reſtituat c. p. 307.

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Fructus inter bonæ conſcientiæ perceptos & percipiendos, judex uti ponitur in



ſundi,

Fr

ſtatim, non adjudicat, poſt litem conteſtatam verò ex officio *t. p.* 307.

Fructus computantur à poſtrema litis conteſtatione *n.* 41 *p.* 310. *n.* 43. *p.* 311.

Fructus tractum non recapiuntur, ſi ſic à Domino ſupervenienti repeti nequeunt *n.* 40 *p.* 310. In Saxonia praeſcribuntur anno & die *ibid.*

Fructus metallici, jure Saxonico pro non renaſcentibus habentur, & ſic ad uſufructuarium non pertinent *n.* 44. *p.* 329

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*Frumentum.*

Frumenti venditio ut ſortaſſibus ſint tempore caritatis certum prohiberi poteſt *t. p.* 688. *n.* 27. *p.* 702.

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Frumentorum perceptum exiſtimatur ſi ſit exceſſum & generis illorum *n.* 169. *p.* 848.

*Fuga.*

De fuga ſuſpectus, reuliter teneri poteſt *n.* 13. & 14 *p.* 105. ſi ex bonis ejus ſatisfieri nequeat *ibid.* de fuga ſuſpectus cavere debet *n.* 24. *p.* 125.

Fuga, ſi alia indicia concurrunt, locum tortura *n.* 3 *p.* 2355.

Fugere non eſt ſemper tutum *n.* 30 *p.* 1608

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Fugitivus differt ab errante *t. p.* 402.

Fugitivorum receptatores *ibid.*

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*Fumus.*

Fumi ſervitus *n.* 29. *p.* 352.

*Fundus.*

*Tit.* De fundo dotali *t. p.* 1020.

Fundus eſt res immobilis *t. ibid.*

Fundum oppignoratum poſſidens, eſt ut liberè ſucceſſione *t. p.* 112 *n.* 32 *p.* 115

Quilibet fundus retinet privati liber, reputari ſolet verò tributarius praeſumitur *n.* 8. *p.* 357. fundus liber vendi non permittitur *n.* 6 *p.* 361. non tamen à tributis ordinariis *t. p.* 795. fundus ut opinio communis vendatur, à ſervitute liber eſſe intelligitur *n.* 72 *p.* 812. fundus ſine onere transferri nequit *n.* 19. *p.* 1202

Fundum plenum convenient ex moribus non licet, niſi qui haben das Gartten-Recht habent *n.* 13 *p.* 382.

Fundus in Pomerania ex fructibus aeſtimatur & cuilibet aeſtimari ſolet *n.* 109. *p.* 710.

Fundo vendito, etiam neceſſaria, ut ſecundum fundi genus comparantur, & ſervitutes tranſeunt *t. p.* 798

Fundus dotalis maritus durante oppignorari nequit *n.* 4. *p.* 897.

Fundus ubi ſolum demonſtrationis gratia adjectum eſt, tum totum debetur, licet ibi nihil autem fuerit *t. p.* 1172. *n.* 27. *p.* 1176.

Fundo in genere legato *n.* 57. *p.* 1179.

Fundo ad eundem ſuccedendum legato, ejus proprietas cenſetur legata *t. p.* 1189.

Fundus ſi uni legatus, alteri verò uſufructus, ambo in uſufructu concurrunt *t. p.* 1189.

Fundo inſtructo vel cum inſtrumentis legato *t. p.* 1192. *n.* 4. *p.* 1193.

*Funus.*

Funus ornatum creditum omnium *t. p.* 412

Cauſa funeris ſummatim tractanda *t. p.* 412.

Funus ſequentes, in jus vocandi non ſunt *t. p.* 412 *n.* 39. *p.* 416.

Funus commeatum, quod religioſum facere deberent *n.* 38. *p.* 416.

De impenſis funeris vid. *ſumptus.*

Pro funere per alienum territorium ducendo, quantum exigant Pontifices *n.* 2 *p.* 418 vid. *mortuus.*

*Fur, furtum.*

Fur factus, ſe ſuo delicto obligat ad reſtitutionem & ad poenam *n.* 26. *p.* 9. *n.* 56. *p.* 1455 Non cenſetur eo, quod non peteret *n.* 30 *p.* 244.

Fur ſi rem furtivam commodato dedit, illa ipſi reſtituenda, nec poteſt opponi exceptio deficientis Domini *n.* 11 *p.* 542 & commodatum non dato rectè conditio *n.* 20 *p.* 491.

Conſtitutio criminalis von jungen Dieben agit de furibus 14 annorum *num.* 59. in [*] *p.* 230.

Furem celans, aut rem furtivam ſciens emens, furi ſic pardonqu *t. p.* 1514. *n.* 29. *p.* 1519. conſilium dans aut operam ferens conditione furtiva tenetur *ibid.* & *t. p.* 508.

Fur ſemper eſt in mora, & tenetur praeſtare uſuram ſortitionem *t. p.* 299. *n.* 9. *p.* 510. non reſtituitur, quantum lucrum plures ſunt *t. p.* 509. *n.* 45. *p.* 515

Fur per oblationem rei furtivae, moram purgare poteſt *n.* 10. *p.* 510. *num.* 44. *p.* 515.

Fur qua tale, non in avertere ex L. Aquilia *t. p.* 367 *n.* 23. *p.* 370.

Fur quando reſtituere poteſt, liberatur *n.* 73. *p.* 644. *t. p.* 1517 modo ſolum non fuerit violentum, nec 5 ſolidos excedat *n.* 36 *p.* 513

Fur deprehenſus ſi quid dedit, ne proderetur *t. p.* 488.

In furto, neceſſario dolus requiritur *n.* 15. *p.* 542. *n.* 60. *p.* 1522. ac ut ſit mentis compos *t. p.* 1514.

Si plures rem contrectaverunt, contra ſingulos datur actio in ſolidum *t. p.* 508. Unus tamen ſolvens reliquos liberat *ibid.* is verò qui ſolvit, à reliquis nihil repetit *ibid.* *n.* 32 *p.* 512.

Fur eſt in peſſima fide *n.* 42. *p.* 515.

Fur non eſt perventendi quaeſtio de dominio *n.* 14 *p.* 512.

Fur ruptus laqueo denuo ſuſpendendus *n.* 67 *p.* 1523

Fur à ſuſpenſione non liberatur, ſi dicat, ſe ab igneo cauſa *n.* 38 *p.* 1629.

Furti arborum lapides puniri poſſunt *n.* 12 *p.* 1531.

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Fur ſuſpendi nequit, niſi ob aliud furtum etiam fuerit punitus *n.* 78 *p.* 1524.

*Tit.* Furti adverſus nautas, caupones, ſtabularios *t. p.* 1528.

Hic titulus à ſuperiori *lib.* 4. *ff.* *tit.* 9 in eo differt, quod ibi praeter illorum alter nihil probare necesse *n.* 8. *p.* 1529

*Tit.* Si is, qui teſtamento liber eſſe juſſus poſt mortem domini, ante aditam hereditatem ſurripuiſſe aut corrupiſſe quid dicetur *t. p.* 1529.

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Furioſus non incipit, ſed continuare poſſeſſionem r. p. 1334.
Furioſus ſuo furore ſacit poenitere n. 2 p. 363 nec pure heredem n. 49 p. 1133 Non patitur in furore r. p. 1508 n. 34 p. 1512
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Hi lapides ut dignoſcantur ſolent appoſitae aut ſuppoſitae habere lapides aut carbones n. 24 p. 382

*Gravamen.*

Quae gravamen perpetuum inferunt, inde ſemper appellatio eſt permiſſa n. 3 p. 1659

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*Grex.*

Qui gregis uſum habet, ille ad ſtercorandum agrum, lacte vero modico ſolummodo uti poteſt n. 5 p. 337

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*Lit. H.*

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Habitatio eſt propria ſpecies ſervitutis perſonalis t. p. 337 cum perſona oritur n. 44 p. 72

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Habitatio [illegible] ſunt [illegible] t. p. 337 [illegible] *Ha* quod habitationem habens, cum alus locare poſſit, quamvis ipſe non inhabitet t. p. 337 n. 15 p. 338

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Quae actio hoc nomine competat? t. p. 571 n. 19 p. 573

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*He*

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*Tit* Si pars haereditatis petatur t. p. 324.

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Lite pendente nihil est innovandum n. 19. p. 330. vel alienandum. i. p. 1443.

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Lobi renunciatio quatuor beneficiorum parvorum n. 55. p. 130. *Locus.*

*Vid.* De eo, quod certo loco, i. p. 522

Contradictiones loci attendenda n. 2. p. 522

Jus in adjudicatione loci alteri quaesitum, ipso invito non est auferendum n. 25. p. 527

Qui certo loco dare promisit, non potest quovis loco actione conveniri n. 27. p. 527.

Contractus forum ubi sit, si agatur de contractu adimplendo n. 11 p. 206. i. p. 256

Quod si non fuerit expressus? i. p. 256.

Si contractus per literas fuerit initus, pro loco contractus habetur is, ubi contractus consummatur i. p. 256. ex inferiori dominiis non attenditur locus contractus n. 123 p. 274.

Ubi competentes quomodo non attenditur i. p. 257 Quomodo loci competentia ratio habenda? n. 10 p. 524. An etiam contra sedentem locum habeat? n. 12 p. 526. Dare aliter actio, quod certo loco. Item aliter ex stipulatu, quod certo loco. n. 3 p. 522.

*Locus contractus.*

Absente etiam in loco contractus inventum competens non omnino i. p. 256.

Hoc de loco contractus locum habent, quando locus domicilii & contractus non potest domino n. 121. p. 274.

Locus contractus etiam censetur locus solutionis n. 25 p. 1497

Locum loco quando Juris consultus aequiparatur? n. 37. p. 987.

*Locus Delicti.*

Locus delicti attenditur forum competens i. p. 217.

Locus delicti ubi est, non ubi delictum consummatum, quam ubi inchoatum est. i. p. 257 in loco delicti conveniuntur malefici, praesertim illustres, praesertim & absentes i. p. 157. Delinquentes puniuntur secundum leges loci delicti n. 122. p. 275.

*Locus Religiosus.*

Locus Religiosus est, ubi sepelitur homo integrum, vel saltem caput eius sepelitur n. 14. in [*] p. 71 i. p. 410. n. 44. p. 413.

Jure Canonico & moribus sepulturae in conventu i. p. 410. quae conveniunt Magistratus Ecclesiastici considerantur i. p. 411.

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Locus religiosus non fit per solam illationem defuncti i. p. 411.

Quae numerus plurium in locis habentur etiam civitatum? n. 7. p. 413.

Commercia sunt locis humanis non concessa n. 9. p. 413.

Evangelicos saltem sepeliunt cemeteriis ab aliis locis, ne promiscue bellum pariant ibid.

*Locatio.*

*Vid.* Locati conducti i. p. 817.

Locatio conductio est contractus consensualis, &c. i. p. 817 & seq. Tacite conducta res conceditur potest i. p. 828. n. 12. p. 834. simul contractus utrum renovetur ibid.

Locatio conducta libere fieri debet ibid. n. 8. p. 833. nec finem contractus levem altera parte continuatur n. 125 p. 843.

Locatio est vel rerum, vel operarum i. p. 817. n. 56. p. 839.

In locatione semper merces praestanda n. 20 p. 668. i. p. 820.

Locatorum sive mercede quando praestanda i. p. 832.

Si locatio pluribus facta in solidum i. p. 830. n. 206. p. 851.

Si non ex duobus locatis? n. 26. p. 836.

In locatione contrahunt n. 175. 176. p. 849. Locus est L. 2 C. de R. P. i. p. 767 & seq. etiamsi facta fuerit per universitatem n. 43. p. 777

Locatio & conductio utitur Juris Regalia, quibus etiam vectigal, continentur n. 42. p. 777. n. 26 in [*] p. 836.

In locatione conductione est bona fides tantum & successive praesertim n. 126. p. 784. quando huius loci ulterius n. 62. 63. p. 842.

Locatio est vel regularis, vel irregularis i. p. 817 n. 58 p. 839.

Locatio rerum privatarum & publicarum n. 135. p. 845

Locare & conducere possunt omnes, qui contrahendo se obligare possunt i. p. 818 nec specialiter prohibentur ibid.

Locari possunt res, quae alienari n. 27. p. 836. etiam singulae n. 29 p. 837.

Locatio irregularis, quid? n. 213 p. 851.

Locationis irregularis natura n. 52 p. 841

Locatio etiam pretio fieri potest n. 55 p. 762.

*Lo Lu*

Locatium ad quantitatem fructuum determinatur n. 175. p. 849.

Locari possunt res in commercio existentes, & quae usu non consumuntur, etiam res incorporales c. p. 819 etiam aliena ibid. Non conductore propria n. 46. p. 838. Venditor, rem venditam locari potest n. 48. p. 838.

Locatium debet esse verum, non simulatum c. p. 820.

A Locatione conductione, regulariter brevi circa consummationem recedi nequit c. p. 821.

Locatio quibus modis finiatur? vid. c. p. 831 Finitur etiam tempore nondum elapso ibid.

Locator postquam re locata ipse indigere coepit, si locationem futuro tempore acceperit, desistere tenetur n. 85 p. 841

Locatori regulariter tenetur heres stare c. p. 823 & qui per sententiam judicis succedit n. 112 p. 843 Non verò successor singularis c. p. 814. Etiamsi in longum tempus sit contracta ibid. Vel etiam habeat [illegible] ibid.

Neque tenetur fiscalis ad quem bona ex jure majorum veniunt, tenetur hunc contractui stare n. 121 p. 845

Locator rem locatam vendere potest. licet promiserit se conductori servaturum contractum c. p. 814. n. 115 & 116 p. 844. in [*] ibid.

Locator à quibus expelli possit? c. p. 824.

Locator debet conductori rem locatam praestare c. p. 826

Locator tacitam hypothecam habet contra locatum n. 39. 41 p. 895 n. 46 p. 896

Per locationem regulariter non transfertur dominium, nec aliud jus in re c. p. 826. n. 215 p. 851. etiamsi ad longum tempus facta n. 45 p. 838 n. 66 p. 840 n. 157 p. 848

Locatio non est alienatio n. 43 p. 838

In locatione unius anni sterilitas alterius ubertate compensatur c. p. 828. n. 173 p. 848.

*Locusta, Die Heuschreck*

Locusta ad quam hominem spectent refundenda? n. 3 p. 406.

*Lucrum.*

Lucrum capere possumus, dum virtuti studemus n. 6 p. 406.

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Alterum cum alterius damno locupletari aequum non putatur n. 18 p. 498

Lucri species est ex alieno largiri n. 12 p. 541

Lucro legali, quis renunciare possit n. 83 p. 612

Lucrum captans beneficio juris non tenetur n. 51 p. 618 n. 32 p. 776

Lucrum, quod quis decepit cum damno alterius, meritò restituendum n. 92. p. 628. n. 32. p. 776. & 779.

Lucri partem eandem sentiunt, qui in damno sunt socii c. p. 675.

Lucrum non est, nisi deducto omni damno c. p. 675.

In lucro versari dici nequit, qui non certo auctus n. 50 p. 777

Duo causae lucrativae in eundem et eandem rem non possunt n. 49. p. 1178. n. 6. p. 1393.

*Ludus.*

Nimius ludus tempus perdendi saepe protrahere solet n. 30. p. 57.

In ludo conditum non sunt inquirendi c. p. 412.

*Ludus.*

Ludus est, quo recreationis gratia in victoriam ludimus, estque artis, fortunae, vel mixtus c. p. 404 n. 23 p. 406.

Ludus artis omnium gentium consensu permissus c. p. 404. Ideoque pecuniam ponere licet c. p. 404. n. 9. p. 406. an pecuniam adhibentem? n. 25. p. 404.

Ludus latrunculorum c. p. 404.

Ludi per accidens saepe sunt illiciti c. p. 404.

Ludorum usus Reipublicae nihil prodest c. p. 404.

Ludus chartularum prohibitus in Ducatu Luneb. restrictus n. 11. p. 407.

Ludo perditum quis condicere possit? c. p. 404. praeter tertiam 50. vestis ibid. Repetitio est contra consuetudinem ibid. c. p. 405. n. 3. p. 406. n. 16. p. 407 n. 24. p. 408.

*Lupanaria.*

Lupanaria, an sustineri jure Romano liceat? n. 19. p. 490.

Lupanaria ubi sunt recepta, ibi meretriciam vitam agere, indeque quaestum facere, turpe non est n. 20. p. 490.

Lupus lupum non devorat n. 47. p. 751.

*Lu. M.*

*Macula.*

Macula ex stupro contracta purgatur per subsequens matrimonium stupratoris cum victima c. p. 173.

Macula levis notae c. p. 174 n. 54 p. 179. Ejus effectus n. 58 p. 180.

*Macedonianum.*

Vid. De SCto Macedoniano c. p. 588. vid. Senatusconsultum.

*Magia.*

Magia diabolica n. 52 p. 1608.

Magia indicia n. 39 p. 1629.

*Magister navis.*

Magister navis tenetur nautas suos praestare n. 20. p. 573.

Magister navis est, cui totius navis cura est commissa c. p. 566.

Cum Magistro contrahens, fidem Praepositionis sequi videtur n. 11 p. 568.

Magister navis debet observare formam praepositionis c. p. 566. n. 5 p. 567.

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*Magistratus.*

Vid. De Magistratibus conveniendis c. p. 1083.

Magistratus probare debet, se in constituendo tutorem officium suum debite fecisse n. 6 p. 1083.

Magistratum primum tacere, postea verò perpetuo Edicta proponere c. p. 19.

Hodie Magistratus à Magistratibus Romanis sunt diversi n. 9. p. 24 n. 2. p. 1054

Erga Magistratum Edictum obedientiam debetur n. 18. p. 30. Extra territorium habetur pro privato n. 65. p. 93 Potest contra Clericorum etiam se exponere n. 76. p. 364.

Magistratus officio functo, pro privato habetur n. 2. p. 1540.

Magistratuum alii majores erant, alii minores c. p. 77.

Magistratus munera sine imperio & potestate erant c. p. 84.

Alii Municipales, alii Provinciales ibid. Municipales apud nos, plena jurisdictione gaudent n. 10. p. 84

Magistratus officio adhaerent, quae jure civili speciali lege comprehensa c. p. 85. Potest alium necessario committere n. 28. p. 90.

Magistratus competens est, vel ratione ne-

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[illegible], vel perſonarum, aut juriſdictionem n. 12. p. 89.
Jure Magiſtratus competere quid ſit? n. 27 in [*] p. 89.
Majores Magiſtratus ſunt, qui de Juriſdictione [illegible] n. 13. p. 92.
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Magiſtratum [illegible] [illegible] juriſdictionem [illegible] n. 7 p. 102.
Magiſtratus in [illegible] [illegible] [illegible] [illegible] [illegible] n. 46. p. 1058. n. 15 p. 1067
Magiſtratus [illegible] [illegible] non [illegible] in [illegible] c. p. 101.
[illegible] omnes Magiſtratus etiam durante [illegible] [illegible] & [illegible] poſſunt ibid. Non [illegible] [illegible] [illegible] [illegible], unde [illegible] [illegible] [illegible] n. 13. p. 1406. [illegible] ſit Princeps vel Imperator n. 11. p. 105
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[illegible], uſi ſint Magiſtratus minores, non [illegible], [illegible] tamen [illegible] poſſunt c p. 118 n. 7 p. 120 n. 10 p. 121
Jus [illegible] [illegible] etiam Magiſtratibus [illegible] competit n. 3. p. 110.
In hoc, quando quis Magiſtratum gerere poſſit, [illegible] [illegible] eſt [illegible] n. 67 p. 248.
Magiſtratus Academiarum vid. Academiæ
Magiſtratus [illegible], ut [illegible] [illegible], [illegible] [illegible], ſi [illegible] ſit [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] n. 16 p. 402.
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*Majeſtas.*

Tit. Ad Legem Jul. Majeſtatis c. p. 1582.
Crimen hoc [illegible] [illegible] [illegible] [illegible] crimen [illegible] Majeſtatis Divinæ n. 1. p. 1583.
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In hoc crimine Imperator ipſe Judex eſt n. 14. p. 1584.
Sententia in hoc crimine [illegible] [illegible], [illegible] tamen [illegible] ſolet n. 17 p. 1585. Crimen hoc non [illegible] [illegible] n. 22 p. 1583.

*Majoratus.*

Majoratus ſeu Seniorat[illegible] [illegible] [illegible] [illegible] principes ſuppeditantur n. 3 p. 747
Senior non [illegible] eſt ſervare paſta in [illegible] familiæ n. 122. p. 845.

*Major, Majorennis.*

Tit. Ex quibus cauſis majores 25 annis in integrum reſtituuntur c. p. 233.
Ut major reſtituatur, [illegible] [illegible] debet eſſe [illegible] etiam per [illegible] [illegible] c. p. 233
Majorennitas de jure civili anno 25 de jure Saxonico 21 [illegible] c. p. 222. & 223 Poſt majorem [illegible] [illegible] [illegible] perſona, quibus jam [illegible] [illegible] n. 14 p. 1088.
Majorennitas in [illegible] exigitur, ne [illegible] & [illegible] per reſtitutionem [illegible] n. 63. p. 192.
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[illegible] [illegible] [illegible] eſt, ſi [illegible] [illegible] [illegible] [illegible], vel [illegible], [illegible] [illegible] non [illegible] c. p. 234.
Major reſtituitur, quoties jure ſuo uſi nequit, ſi [illegible] non à [illegible], quæ [illegible] non eſt, ſive [illegible] [illegible] [illegible] c. p. 234.

*Mandatum.*

Mandatum [illegible] & ſine clauſula n. 6. p. 37
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De mandato de non [illegible], vel [illegible] [illegible] ad [illegible] p. 1393. n. 1 p. 1401.
Mandata [illegible] c. p. 84.
Si pluribus mandetur, [illegible] [illegible] [illegible], niſi [illegible] ſit clauſula [illegible] [illegible] c. p. 84. n. 47 48 p. 92.
– Quando revocari poſſit? n. 52 p. 98.
Mandata [illegible] [illegible] [illegible] [illegible] [illegible] c. p. 392. n. 30 p. 394.

*Mandatarius.*

– [illegible] non ſit Magiſtratus c. p. 83 [illegible] à [illegible] in [illegible] [illegible] differt n. 76 p. 1660.
– Mandatarius [illegible] mandata [illegible] c. p. 84.
A mandatario [illegible] ad [illegible], ſed [illegible] [illegible] c. ibid. n. 42 p. 92.

[illegible]

*Ma*

[illegible] ibidi non mandat, *ibid.*
-- [illegible] sententiam requiritur *ibid.*
-- [illegible] mandans JCtis mandando re [illegible] *ibid.*
[illegible] mandandi *t. p.* 85.
Distinctio inter mandatarium JCtum & [illegible] delegatum *n.* 56 *p.* 92.
[illegible] censetur, qui patitur sua negotia geri *n.* 8 *p.* 620.
Mandatum est vel Expressum, vel tacitum *n.* 3 *p.* 666.
[illegible] non potest plus mandatario committere, quam ipse possit cognoscere [illegible] *p.* 91.
[illegible] & mandatarius aequali actione [illegible] *n.* 29 *p.* 511 *n.* 5 *p.* 1307
Ibi quoque mandatum censetur, sine quo mandatum expediri nequit *t. p.* 566
[illegible] rei turpis aestimatum non [illegible] *n.* 39. *p.* 581.
Mandatum vide etiam *Procuratorium* [illegible] Mandari vel contra, *p.* 662.
Mandati definitio & divisio *t. p.* 662.
*Liberi* praesumuntur habere mandatum in causa parentum *t. p.* 181 idem in [illegible] contracta ad quartum gradum *n.* 3 *p.* 1506.
Quod mandantis gratia tantum geritur, consilium est, non mandatum *t. p.* 662
Mandatum contrahitur consensu quocunque modo declarato *t. p.* 662.
[illegible] facto & patientia *n.* 7 & 8. *p.* 667.
Mandatarius quam culpam praestat? *n.* 108. *p.* 550. *t. p.* 663. 665. *num.* 46 *p.* 670.
Mandans obligatur ad indemnitatem mandatario praestandam *t. p.* 663.
Verba mandandi, volo, mando, jubeo, [illegible] *t. p.* 663.
Mandatum suscipitur, qui contrahendo [illegible] obligare valent *t. p.* 663. etiam [illegible] *ibid.*
Mandatarius ad [illegible] regulariter [illegible] tenere nequit *t. p.* 663.
Mandatur negotia futura & absolvenda *t. p.* 665.
Mandatum sit gratis, honorarium tamen accedere potest *t. p.* 663.
Ex mandato alterius accepisse aliquod docere debet *n.* 5 *p.* 667.
Mandatarius [illegible] bona fide [illegible] recepit, etiamsi mandans [illegible] fuit *t. p.* 665.

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[illegible] negotium sine culpa mandatarii [illegible] etiam habuerit *t. p.* 665
Mandatarius fines mandati observare debet *t. p.* 664. Si hoc non facit, quod gessit, tamen nullum non est, saltem pro illa parte *n.* 37 *p.* 669.
Mandati fines excedit, qui minoris vendit, non qui majoris emit *t. p.* 664.
Mandatum an aequipollens admittat? *n.* 45 *p.* 670.
Quod damnum mandatario casu fortuito contingit, non repetit, nisi mandans tempore mandati sciverit periculum, aut mandatarium potuerit compellere *t. p.* 665
Mandatarius superfluum sumtum absurde [illegible] petit *t. p.* 665
Mandatum contra bonos [illegible] [illegible] est expediendum, si negotio nulla certa forma est praescripta *t. p.* 665.
Mandatarii cura libera *n.* 2 *p.* 666.
Mandatarius si sit in mora rei [illegible], tenetur ad usuras *t. p.* 665.
Mandatum solvitur morte [illegible] *t. p.* 666.
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-- Morte [illegible], [illegible] *n.* 72 *p.* 672.
-- morte utriusque, tam mandantis, quam mandatarii *ibid.*
Post mortem tamen, si ita convenerint durare potest *n.* 74. *p.* 672.
Haeres mandatarium continuat nisi singularis personae industria sit electa *n.* 77 *p.* 673.
Mandatum, commendatio & consilium differunt. *n.* 9. *p.* 668.
Ex mandato inhonesto nulla nascitur obligatio *n.* 17 *p.* 668.
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*Marca.*

Marca, seu libra [illegible] *n.* 26. *p.* 2699.
Ein Marck [illegible] Goldes
Marca, oder Marck löthiges Goldes, quanti aestimetur in Camera? *num.* 1. *p.* 100.

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Mare est publici juris & cuivis [illegible] patet *t. p.* 68. *n.* 21. *p.* 74.

*Maritus.*

Maritus dotalia, non verò paraphernalia & receptitia à tertio vindicare potest *n.* 12 *p.* 1010. In bonis receptitiis praesumitur habere mandatum *t. p.* 181.
Maritus in Saxonia est heres mobilis [illegible] *n.* 28. *p.* 74 *n.* 4. *p.* 1257 plus tamen habet in bonis uxoris, quam uxor in bonis mariti *n.* 19. *p.* 681. praedii dotalis periculum sustinet *n.* 26. *p.* 860 sed quid dicendum, si uxor mobilia non relinquat? *n.* 70. 74. *p.* 1270.
Maritus paraphernalium usufructuarius est *n.* 30. *p.* 1021.
-- habet restrictum dominium circa rem dotalem *n.* 3. *p.* 308. *t. p.* 1008 *n.* 24. *p.* 1015.
-- rem dotalem vindicat *n.* 14. *p.* 1009. usumfructum habet in bonis [illegible] *n.* 77 *p.* 1005.
-- ob tenerum affectum erga uxorem non praesumitur bona uxoris dilapidaturus *n.* 19 20 [*] *p.* 328.
-- in dote servanda, quam diligentiam praestat? *t. p.* 1008. *n.* 22. *p.* 1016.
-- quem habeat usumfructum in rebus [illegible] ab uxore [illegible] in Saxonia? *n.* 5 *p.* 315.
-- tenetur quidem sepelire uxorem, non verò suis sumtibus *n.* 49. 50. *p.* 417.
Dominium dotis restringi & ampliari potest *n.* 27 *p.* 1016.
-- in aegram uxorem impensas factas, non repetit, sed [illegible] afflictione imputat *n.* 50. *p.* 417. *t. p.* 989.
-- constante matrimonio non tantum alimenta, sed & medicamenta uxori suppeditare debet *n.* 51. *p.* 417 *n.* 78. *p.* 1005.
Marito incumbunt onera matrimonii *n.* 15. *p.* 626.
Maritus de dote describenda quando tenetur? *n.* 97 *p.* 548.
Marito ignominiosum est, verberare uxorem *t. p.* 989. *n.* 74. 75 *p.* 1005
Maritus non potest pro uxore se oppignorare *n.* 92 *p.* 840. *n.* 124. *p.* 845.
-- pro uxore solvens non tenetur *n.* 27. *p.* 639.
-- cum uxore societatem inire potest *t. p.* 674 *n.* 29. *p.* 682.


Gggg ggg ggg 2

Quo

Ma

Quæ in matrimonio acquiruntur, ad heredem pertinent n. 19 p. 630.

Mater ad exhibendum curatori etiam contra patrem agere poteſt i. p. 989

-- curatore deficiente, alio, eaque ſuperſtite, ſi de ſuo ſuppleat repetere i. p. 989. n. 99. p. 1005

-- an poſſit eſſe curatrix curator? n. 9. 12. p. 1093.

-- alias res, quibus aliquas vendidisset ſuo nomine, alienare poteſt n. 2. p. 1021

-- quæ tutorum gaudet beneficio competentiæ i. p. 1030. n. 8. p. 1032

-- aliquando donare licet i. p. 1031.

-- expenſas fructuū de ſuo facit i. p. 1033.

Maritus adulterum occidere licet, ſi ſi ſi uxorem occidat, eamde nullam licitam capit n. 68. p. 1270. i. p. 1588 n. 39. p. 1596.

Maritus, ut de adulterio ſuſpectum occidere poſſit, triplici denunciatione ipſi colloquium cum uxore interdicere debet n. 15 p. 1593 n. 18 p. 1594.

-- adulterum remittere uxor, ſi poſt adulterium cum illo agere n. 11 p. 1595.

-- adulterum in adulterio deprehenſum, ſi illum occidere non vult, per 30 horas retinere & detinere poteſt n. 31. p. 1596

*Maſculus.*

Maſculi ſunt perfectiores, & melioris conditionis fœminis i. p. 43.

In dubio quis præſumitur eſſe maſculus n. 22. p. 52.

Ubi mas & fœmina jungi debent, ibi mas præfertur, & prius jungi i. p. 439.

Maſculus adulter mortis pœnam meret. n. 6. p. 1592

M... turpe eſt, non poſſe invenire tutorem, niſi patrum habet dotem constitutam n. 14. p. 1013.

*Maſtupratio.*

Maſtuprationis crimen n. 49. p. 1598.

*Mater.*

Mater à tutela & vitam & bona liberorum patris mortui pro tutore obtinere & cum ſecundo marito n. i p. 1074

Mater hodie eſt legitima tutrix n. 5 p. 1045

Mater & Avia præferuntur omnibus Leg. ... Collateralibus, non ... i. p. 1053 n. 6. 14. p. 1055. Nec removentur ſola patris ... p. 1053

Mater Tutrix renunciat ſeniores ... & SCTO VELLEJANO ibid.

Ma

Mater huic SCTO renunciare cenſetur, licet non renunciaverit n. 8. 17 p. 1058.

Mater ad ſecunda vota tranſiens, deſinit eſſe tutrix ibid. n. 15 p. 1053.

Mater nubens tutelam liberorum amittit petere i p. 1058

Mater tutela, an ad legitimam, an verò ad Dativam referenda? n. 10 p. 1055

Mater tutrix omiſſum petitionem tutorum in integrum reſtitui poteſt n. 5 p. 1059

Mater non teſtatur liberis deportatum n. 23 p. 51. Niſi ſpeciali ad privilegium ſitum ... ibid. Pregnans ſententia, vel. mulier.

De matre tranſaction ad imperium liberorum n. 18 p. 994

Mater non habet patriam poteſtatem i p. 55

Mater non liberos adulterinos dicere, ſibi non prævaleat n. 4 p. 55

Mater ...a de adulterio ſit convicta, tamen partus præſumitur legitimus ibid. p 56 n. 90 p 948

Mater ſua confeſſione non poteſt præſumtionem ... labefactare n. 4 p. 56. in [*] n. 5 p. 1058.

Mater per adſtionem ad alimenta filio præſtanda non compellitur, ſed per imploratorem n. 29 p. 90 i p. 1017

-- niſi paupertas ſuerit, alimenta non recipit n. 5 p. 108

Si fœmina ſin locum filio ſuppoſuerit, idem dicendum n. 116 p. 505

Mater hoc fœmina repetit per aſtionem ... geſtorum i p 1057

Matris præruptio eſt pro exhæredatione i p 281 ſed tempore eſt ſecundis contra n. 7 p 287

Mater, ſi liberos præterit, teſtamentum nullum eſt n. 20 p. 1113

-- eadem forma, qua pater liberos inſtituit n. 7 p 1136

-- ſemper certa, pater vero incertus n. 15 i p. 289 in [*]

Matris tutela jure ſit ... n. 15 p. 476

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De matre ſubſtituto hoc legitima debet n. 41 p. 292

Ma

An à tutelis ſit, intentio, ſi pupilli adminiſtratione? n. 13 p. 141

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Matrimonium tacite vel. Conſenſu Lect. vel. curam Magna. ... hoc cura matrimonium non, patrem habere non ad legitima n. 23 p. 51. qui in matrimonio naſcuntur ... n. 24 p. 53. Sponſo vero legitimi non juncti non legitimantur n. 24 p. 53 Atque ... n. 30 p. 55. Praterrea vero nullum n. 3 p 5. Non contractum nullum eſt i p. 209 ... i p. 61 aliquando ad Eccleſiaſticum, aliquando vero ad ſeculare forum pertinet n. 15 p. 95 in [*]

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Matrimonium ob poſitionem dotal non neglectam non retractatur num. 31 p. 981. non impedit reſtitutionem in integrum, non tam obvio in minore ſunt n. 3 p. 225

Matrimonium nullum, an prohibitum ſit, penes ſuos n. 21 p. 424.

Per matrimonium liberi exhibentur à patria poteſtate n. 57 p. 607

Matrimonium per ſamam vicinitatis, cohabitationem, & alia adminicula præſumitur probatur n. 9 p. 945 n. 9 p. 992

Matrimonii initium, eſt lege divina univerſalis n. 48 p. 998.

Matrimonium eſt vel ratum, ſed non legitimum, legitimum ſed non ratum; vel legitimum, & ratum ſimul i. p. 986

Et ab ea diviſione matrimonii, an vaſtum & impoſſibile ... commune ibid. n. 967 p 991

Matrimonium præſumto à putativo differentia n. 9 p. 992

Matrimonium ſit carnis conſenſu matrimoniali i p. 986 quorum conſenſus requiritur, hoc est, vel. ibid.

Matrimonium ; ... veri matrimonii ... de quo ... n. 10 p 992

Matrimonium pro ſuis ſingulorum effectus i. p.

*Ma*

c. p. 988 & 989 [illegible] mundi, rationem [illegible], rationes liberorum, de quibus licet *ibid.*

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Pœna tamen eſt [illegible] n. 63. p. 1004

Prohibitio matrimonii in gradibus prohibitis, an ad ſimiles gradus [illegible], diſſenſio eſt inter ipſos Rabinos n. 56 p. 999.

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*Itē.* Solutio matrimonio quemadmodum Deus [illegible] c. p. 1030.

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Matrimonium [illegible], ſi quis aliena ſponſa [illegible] c. p. 1550

Non [illegible] matrimonium [illegible] n. 5 p. 1552

*Me*

*Matroſia.*

Quinam [illegible] ſint? n. 18 p. 568

*Medalion.*

Medallion ad [illegible] non pertinent n. 2 p. 1196

*Medialbanus.*

Si [illegible] aliquid [illegible], [illegible] c. p. 247

*Medicus.*

Medicus cum [illegible] non poteſt [illegible] de homicidio c. p. 157 n. 68 p. 149

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Medicamentum [illegible] videtur n. 2 p. 1208

*Mendacium.*

Mendax [illegible] poteſt n. 6 p. 36. Negans poſſeſſionem penes ſe eſſe, ſi mendaciter convincatur poſſeſſione privatur, quæ in alterum transfertur, etſi [illegible] c. p. 307. Qui negat ſe dominum animalis [illegible], [illegible] c. p. 363. negans fundamentum beneficii ſui, beneficio indignus eſt n. 63 p. 503 n. 51 p. 684.

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Mentem ſive ſcripturam ſuam, negans, omnem [illegible] contra aliud inſtrumentum n. 55 p. 311 n. 59 p. 1431.

Quibus in cauſis [illegible] vide in duplum vel. *Lex.*

Mendicum Cauſæ *Sponte.*

[illegible] n. 4 p. 1554

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Menſa [illegible] n. 41 p. 704

*Menſis.*

Singulis menſibus tribuuntur 30 dies c. p. 54. [illegible] vel ſolaris, vel lunaris n. 10. p. 57. Vel Capitularis, vel Eccleſiaſtic ſive Epiſcopalis n. 2 p. 120

*Menſor.*

*Itē.* Si menſor falſum modum dixerit c. p. 409. [illegible] [illegible] per [illegible] tam, vel [illegible], qui eam publicè profitentur c. p. 409. In plures menſores [illegible], quibus [illegible]? n. 12 p. 410.

*Me*

*Menſura.*

Menſuris & ponderibus [illegible] c. p. 1250. [illegible] venditione ad menſuram facta, illa menſura ſpectari debet, quæ [illegible] rei ſitæ, non quæ in loco contractus [illegible] c. p. 689 n. 47 p. 704

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*Menſtruum.*

Menſtruum id appellatur, quod in [illegible] c. p. 1 58

Menſes [illegible] c. p. 2095.

*Mercator.*

Mercatores [illegible] habere, ut [illegible] Conſtantinopolitanorum [illegible] patent n. 15 p. 349

Mercatores, ubi ſpeciale privilegium [illegible] [illegible], [illegible] n. 77 p. 432

Mercatura per [illegible] [illegible] [illegible] n. 15 p. 579

De [illegible] mercium vid. *Hæretic* [illegible] [illegible]. Ubi [illegible] bonorum [illegible]

Ob ſavorem mercaturæ ſervatur ad [illegible] [illegible] n. 70 p. 632.

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*Merces.*

Merces non debetur [illegible] n. 14 p. 48 in [***]

Merces ad menſuram, vel in diem conſtituta [illegible], nec petitur c. p. 811 n. 210 p. 831

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*Meretricius* vid. *Operarius.*

Meretr ſamiliarum, [illegible] non debetur

*Me*

pro uno tempore, ſi aliquo juſta cauſa à domino abeunt n. 8 p. 403

*Mercatura.*

à Comitibus non debet n. 18 p. 59 vitanum denique non ſit infame 1. p. 273

Mercatura corpitur ſeri, quod ſe mercatura non temporis tempore, non ſe mercatura n. 9 p. 492 n. 10 p. 490

Mercatura dictum, ſerviis cuius emerat, ex ſit conditione n. 20 p. 492.

Mercatores à vectura expedi poſſunt n. 45 p. 842

Mercatores ſæpe contra honeſtas perſonas mercipationes faciunt ad extorquendum pecuniam n. 4 p. 1557

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*Merx.*

Merx pecuniaria n. 12 p. 685

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Merces in fraudem creditoris auf Commendatur Credit, probè attendendum n. 8 p. 802 n. 16 p. 809

Mercium uſuræ an debeantur? n. 215 p. 815

Mercium venditor, quo tempore ſatiſfactum fuerit n. 24 p. 1457

*Meſſis.*

Meſſem contrahentium emere prohibitum eſt n. 9 p. 1554

Meſſem in herba emere per ordinationem Polliceam de anno 1577 ſimpliciter prohibitum non eſt 1. p. 849

[illegible] n. 9 p. 749 n. 17 p. 568

*Metata*, die Einquartierung.

Metata à Locatore præſtari debent 1. p. 830 n. 101 p. 860 niſi milites de facto prædia conducta occupaverint n. 199 p. 850

Metam Imperatorum vide *Imperatum*, quaſi ſummum vel inſigne dominum [illegible] 69 p. 94.

*Metallum.*

Metalla aqua chryſolegi poſſunt ſuperari n. 66. p. 1322.

*Metalli fodina.*

Quomodo ad uſumfructum referatur? 1. p. 326. n. 44 p. 329.

In metalli fodinas ſubeſt conceſſum n. 23. p. 776.

Metalli fodinarum diviſio n. 24. p. 776.

*Metus.*

Metus in conſiliarum virum cadens, ſuit quidem reſcindi, non verò ipſo jure nullum declarat contractum 1. p. 699.

Metus conceſſionis, vel. Conceſſio.

*Tit.* Quod metus cauſa geſtum erit 1. p. 209

Metus, ut actus deceat, non utcunque ſufficiunt, quam vera requiritur n. 21. et [**] p. 211.

Metu geſta requirunt ſubſiſtere 1. p. 209 quædam recipiuntur, ut ab initio nulla n. 22 in [*] p. 212. Idcirco quæritur, an negotium ſit ipſo jure nullum, an reſcindendum n. 23. p. 212

Vi metuque compulſus, qui aliquid geſſit, eo ſeque læſus, reſtituitur in integrum 1. p. 209

Requiritur hic vis compulſiva, non ſi læſus ſe poſſiſſet habuiſſe, alias eſt violentia, & per 30 annos impugnari poteſt n. 2. p. 210.

Metus non debet eſſe vanus 1. p. 204. ut vir metuens, vel reverentia ibid. n. 9. p. 211. an ſi vanus, arbitrio judicis determinandum n. 15. in [*] p. 211.

Metus debet eſſe præſens, juſtus, qualis eſt mortis, item naturalis, quam civilis, ſtupri, amiſſionis omnium, vel plurium bonorum 1. p. 209 in debitis excuſat à dolo, & liberat à pœna ordinaria n. 3 p. 210. Ex communione Judicis extra non prodeſt ad reſtitutionem n. 7. p. 211 n. 17 in [*] ibid. Non intereſt, an quis in ſe, an in liberis vereatur 1. p. 209 Hæc reſtitutio non datur contra teſtamentum 1. p. 209.

Hæc reſtitutio idem denegatur, quod metum patiens, annis cum alienis dedere operam 1. p. 209.

Metus vitiat matrimonium, modo per ſententiam declaratur nullum ſuiſſe declaratur 1. p. 989.

Metum paſſus, non temere aliquo reſiſtere poteſt n. 37. p. 215.

Metus teſtamentum nullum reddit, licet poſtmodum liberum ſit atque. 12. & 13. p. 1465. 1264.

Actio, quod metus cauſa, eſt in rem ſcripta 1. p. 209 non ſunt annexum, adverſus in rem ſcriptam, & ſemel in perſonam datur n. 24 p. 212. in [*] nec perſecutoria 1. p. 210.

-- Ob commemoration non reſtituentis ſit minus pœnalis 1. p. 210.

*Me Mi*

datur contra omnes metum inferentes, & quidem ſingulos in ſolidum 1. p. 210.

-- Etiam contra omnes, ad quos res pervenit, licet ſe conſenſerint 1. p. 209 n. 32 p. 214.

-- Etiam contra hæredes, quatenus aliquid pervenit 1. p. 210.

*Tit.* De dolo mali & metus exceptione 1. p. 1440.

-- Qui metum incuſſit, reſtituere cum fructibus 1. p. 210.

-- tenetur ut ſit, vel cuperet n. 26 p. 212 n. 34 p. 214

Metum inferens, ob delictum ſuis, coquirendi eſt arbitrium. n. 18 p. 211 n. 23 p. 212. n. 26. ibid. n. 20 p. 1442.

-- Pœnitus adverſus poſſunt poteſt n. 35 in [*] p. 215.

*Tit.* De Migrando 1. p. 1418

*Miles.*

Miles, quid? 1. p. 1683.

Poſſe milites ſuceſſionis fiunt inſtar alterum volentium 1. p. 138 n. 81. p. 150. & in [*]

Miles in loco delicti convenitur poteſt 1. p. 237.

-- Libera legitimum auferre poteſt n. 82 p. 150.

-- Non verò alimenta n. 65 p. 294.

-- Poſſidere neque 1. p. 165 niſi ſit veteranus, vel cauſa propria n. 52 p. 289.

-- nomine alieno procurare poteſt n. 52. p. 289.

-- alteri petitio condemnatio eſt inſtituta 1. p. 272.

-- Caveat, ne occaſione cinguli militaris veniat graves cauſæ n. 15 p. 276.

-- tum in delictis communia, quæ militanti ad militem militarem non ſolent n. 125 p. 275 n. 152 p. 279.

Quod de aliis, qui accipiunt: Ulitts Gerber ibid.

*Tit.* De Teſtamento militis 1. p. 1642.

-- Ex ſingularis privilegio teſtari poteſt n. 35. p. 291.

Contra teſtamentum militis, licet hoc commune ſolum, locum non habet querela inofficioſi teſtamenti 1. p. 234

Militis morte tributum ſint præſumitur n. 49 p. 303.

Ob militem occaſum tributum ad curtem agere poteſt n. 35 p. 372.

Miles licet aut ignorat p. 494. n. 6. & p. 1684.

*Mi*

*Miles* pro alio non conſtituit *r. p.* 928.
*Miles* tutorem non ſubeunt *n.* 6 *p.* 1684
*Miles* non tenetur SCTO macedoniano *n.* 20 *p.* 593 *n.* 46. *p.* 595.
*Militia* nobilis, quæ requirit, non pertinent ad peculium caſtrenſe *num.* 13 *p.* 604
*Miles* habet beneficium competentiæ *n.* 24 *p.* 605 *n.* 7. *p.* 1684.
*Miles* mercaturam abſque privilegio exercere neque, negotiationem octo [illegible] bene exercet, *n.* 23 *p.* 702.
*Miles* pro parte teſtatus, pro parte inteſtatus decedere poteſt *n.* 110 *p.* 710.
*Militis* pœnitus [illegible], rectè ſibi vindicat *r. p.* 800.
*Miles* conducere prohibetur *r. p.* 818
*Militis* appellatione comprehenduntur [illegible], non milites [illegible] *n.* 20 *p.* 836.
*Miles* arma pignori dare prohibetur *n.* 29 *p.* 883.
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*Miles* teſtari poteſt ſine omni ſolennitate *r. p.* 1143 *n.* 22 *p.* 1146 *n.* 2 *p.* 1240.
*Miles* ante miſſionem jure militari teſtamentum condit, *n.* 56 *p.* 1104 ante militiam conditum teſtamentum non eſt militare, niſi declaratio accedat *r. p.* 1143. *n.* 6 *p.* 1145.
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*Militis* teſtamentum poſt miſſionem, ut ſolenne intra annum valet *r. p.* 1143.
*Miles* eſt, qui ab eo, qui jus belligerandi habet, ad juſtum bellum lectus, & in numero militum adſcriptus *r. p.* 1142 & *ſeqq.*
*Milites* vagi: der Freybeuter / non gaudent privilegiis militum *r. p.* 1143.
*Militis* Nomen: der auf den Gaſern [illegible] *n.* 3 *p.* 1145.
*Miles* [illegible] poteſt *n.* 19. 21 *p.* 1146.
*Miles* [illegible] duobus teſtamentis decedere poteſt *n.* 20 *p.* 1146.

*Mi*

*Milites* à vectigalibus immunes non ſunt *n.* 27 *d.* 1250.
*Miles* ſi ſeduxerint, retinent beneficio *l.* 31 *C.* Locati *n.* 14 *p.* 1482.
*Militum* privilegia ex æquitate indulgentur iis, qui in hoſtico ſunt, ut conſiliariis bellicis, *&c. r. p.* 1143. *n.* 7 *p.* 1145.
*Milites* ſtipendio ſunt contenti *n.* 27 *p.* 1680.
*Militibus* quo uſque in bello ſpoliandi licentia ſit permiſſa ex indulto Principis dependet *n.* 27 *p.* 1680.
*Militibus* in juſto prælio captis non ſolent facile ſtipendia denegari *n.* 47 *p.* 1682.
*Militum* redemtio *n.* 48 *p.* 1682. *n.* 52. *p.* 1683.
*Tit.* De re militari *r. p.* 1683.
*Miles* quis ſit, ex quo in numerum relatus *n.* 2. *p.* 1683.
Miles veteranus, vid. *veteranus r. p.* 1684.
Milites [illegible] *n.* 1 *p.* 1685.
*Militum* receptio, ad quem [illegible] pertinet *n.* 4 *p.* 1693.

*Mina.*

*Minæ* verbales metum juſtum non faciunt *r. p.* 209 aliud ſi ſint capitales, & à tali prolatæ, à quo illarum executio metuenda *n.* 8 *p.* 212.

*Miniſter.*

*Miniſter* Eccleſiæ, vid. *Eccleſia.*
Miniſter publicus vid. *Præco.*

*Minorennis.*

*Tit.* De minoribus 25 annis *p.* 222.
Vocabulo minoris indigitatur, qui 25 ætatis annum nondum exceſſit, ſive impubes, ſive in mera ætate *r. p.* 223 *n.* 23 in [*] *p.* 225.
Electorum minorennitas anno 18 finitur *r. p.* 223
Minor ſi per facilitatem fuerit læſus ob minorennitatem reſtituitur in integrum *r. p.* 222. tempus hoc naturaliter computatur *r. p.* 223.
*Minor* ex ſua conventione non obligatur *r. p.* 137 modo veniam ætatis non impetraverit *r. p.* 223.
*Minor* accipiendo curatorem, ſibi aufert facultatem de rebus ſuis diſponendi *n.* 71. *p.* 149.
*Minor* ad factum ſe obligare poteſt *n.* 71 *p.* 149.

*Mi*

Si curatorem non habeat, valet contractus *ibid.*
*Minor* 60 annis non ſine cauſæ cognitione adoptat *r. p.* 60.
*Minorum* fragile eſt judicium *n.* 19 *p.* 1045
*Minores* ſententia læſi, niſi ab ipſis prudentia reſtituuntur *p.* 78.
Non poteſt abſque curatore Procuratorem ad litem conſtituere *n.* 48 *p.* 149.
-- Neque ipſe, ſi ſit 25 annis minor procurare *r. p.* 182. *n.* 59. 60. *p.* 190.
-- Aut Syndicum agere *r. p.* 194 vel tutorem *n.* 25 *p.* 145
-- Quæ impubes abſque tutoris auctoritate geſſit, nulla ſunt *n.* 5. *p.* 126.
*Minor* conſentiente curatore læſus, electionem habet, utrum reſtitutionem petere, an verò contra curatorem agere velit *n.* 9 *p.* 205. *r. p.* 223. *n.* 18 in [*] *p.* 227.
-- Contra læſum ſocialem, niſi in ſolidum teneatur *n.* 5 *p.* 205.
-- Reſtitutionem intra legitimum tempus petit *n.* 15 in [*] *p.* 206. quod minori currit à tempore, quo major factus *n.* 30. in [**] *p.* 208. & *p.* 229 *n.* 67 *p.* 231.
Minoris reſtitutio ſocio ejus prodeſt in re ſcilicet individua *n.* 30 *p.* 108.
*Minor* contra venditionem reſtituitur & ipſe pretium reſtituit *r. p.* 204 *n.* 30. *p.* 208 *r. p.* 224.
*Minorum* jure utuntur omnes qui alieno arbitrio reguntur, *n.* 72 *p.* 291.
Quod majores prudentia conſiliisque ſibi poſſunt, id minores habent proviſione legum *n.* 97 *p.* 938. Contra id, quod minor cœpit, major verò perfecit, non datur reſtitutio *r. p.* 223. Contra ſolutionem ex Decreto factam, non contra contractus judiciales datur *n.* 53. *p.* 230. in [*]
Ut minor reſtituatur, ut læſus fuerit, requiritur, ſuper hac læſione judex cognoſcit, ut enim certus ſit, non requiritur *r. p.* 223. Læſio tamen non debet eſſe minima *n.* 15 *p.* 775. Reſtituitur contra omiſſam hæreditatem & provocationem *n.* 2. *p.* 225. Et ad omiſſas exceptiones *ibid.* Non reſtituitur ob læſionem ſuperveniėntem *r. p.* 233. & [illegible] præſente adverſario *ibid.* In

*Mi*

minimalibus terminetur minorennitas anno 14 n. 50 p. 230.

Si dolus minoris appareat, non reſtituitur p. 224. n. 58. p. 230. niſi tamen etiam ſit ex dolo n. 64. p. 230. Item, ſi ſe majorem dixerit ibid. Neque contra negotia ſpiritualia n. 20. p. 212. in [*] n. 26. p. 230. In his habetur pro majorenni n. 38. p. 266.

Minor reſtitutionem petens, probet minorem, læſionem *t. p.* 223. n. 19. p. 227 in [*] num. 25. p. 227 & 230. in [*] Sufficiatne, quod ſimpliciter læſus? vel etiam requiritur dolus adverſarii? n. 21 p. 227 in [*]

Minor contra minorem non reſtituitur *t. p.* 224. non reſtituitur contra oppignorationem à patre factam num. 46 p. 229. Reſtituitur verò contra SCtum Macedonianum vel Vellejan. *t. p.* 224 Cautela quæ obſervati, quod etiam minor contrahitur n. 60 p. 232 in [*], vid. etiam *Reſtitutio in integrum*. reſtituitur contra aditionem hereditatis, quæ tamen geſta non reſcinduntur n. 49. p. 229.

Minor in emtione venditione læſo, per reſtitutionem in integrum ſuccurritur n. 113. p. 710.

Minor non reſtituitur contra venditionem ſub haſta ob debita fiſcalia *t. p.* 224.

*Minori* non datur tutor in Proceſſu inquiſitionis n. 7. p. 1066.

*Minoris* bona immobilia abſque Decreto non ſunt alienanda *t. p.* 156. Contra tale etiam Decretum reſtitui poteſt *t. p.* 224 niſi alienatio fuerit neceſſaria, ut in diviſione hereditatis num. 11. 12. p. 385.

*Minor*, quando ad omiſſam jus Protimiſeos reſtituatur? n. 32. p. 237. quando Judex eſſe poſſit? n. 66 p. 268

*Minor* habet actionem vindicationem ad conſequendam rem ſuo pretio emtam *t. p.* 306.

Minorum res inuſtus ſervare prohibetur, quam valuerint cauſa remedium quærere n. 4. p. 592.

Minor habetur pro majorenni n. 38. p. 266

-- non reſtituitur ad illud tempus, quod ſupervenit, ſed in æſtimanda læſione tempus contractus attendatur num. 115. p. 710.

*Mi*

Miſericordia vocabulum dupliciter ſumitur, latè vel ſtrictè n. 15. p. 1046.

*Miſerabiles.*

Privilegium miſerabilium perſonarum vid. *Perſonæ.*

*Mixtum Imperium.*

Mixtum Imperium conſiſtit in dandis bonorum poſſeſſione n. 56. p. 91.

vide *Imperium.*

Mixtum Imperium dicitur, quaſi aliquid humilioris admini habeat n. 69 p. 94

*Mobilia.*

Mobilia pretioſa, quæ facilè amoveri nequeunt comparantur immobilibus *t. p.* 112. n. 12. p. 124. in [*] n. 2 p. 1021 modo ab homine bonis ſunt detentur n. 23. p. 115.

Mobilia ab hoſtibus, quæ capta fuerunt, regulariter non habent jus poſtliminii *t. p.* 1676.

In mobilibus ſit ſucceſſio ſecundum ſtatuta loci, ubi domicilium habebat defunctus n. 134. p. 276.

Mobilia in literis inveſtituræ expreſſa, pro feudalibus habenda n. 30. p. 812.

-- tunc cenſentur occupata, quando intra præſidia fuerunt redacta num. 20. p. 1679. n. 30. p. 1780.

*Moderatio.*

Moderatio non habet locum, ubi dicta eſt conventio pœnam n. 7 p. 4.

*Modernum.*

Modernum vocatur, quod eſt infra decennium n. 15 p. 775 aliquando denotat legitimum n. 2 p. 586.

Modus *t. p.* 141 *t p.* 1210.

Modus adducitur per particulam, ut *ibid.* n. 134 p. 155 *t p.* 480.

Modo non impleto, reſolvitur negotium conditionem *t. p.* 141 n. 135 p. 155 n. 136 p. 713.

Præſcriptus modus uſufructuario obſervandus. n. 9. p. 732

Modus etiam in ſervitutibus obſervandus, ut eo modo, quo ſuere conſtituta, ſit utamur *t p.* 360.

Modus venditionem non ſuſpendit, ideò ſi venditor moriatur, non venditoris aliaſtum conſiſtit n. 11 p. 182 n. 45. p. 704.

*Moneta*, vide *Munta.*

*Monetaria.*

Monetarii die Werber / der Münzfelder n. 1. p. 1282.

*Mo*

Molendina, ſive ſint Pertinentia, ſive aliena ſtabilia, non tamen reſeruntur ad immobilem *t. p.* 69

Jus molendinum novum habendi ad certum locum reſtrictum n. 29 p. 75 n. 41 p. 76. Aliud de molendinis magnatis dicendum n. 37 p. 75

Jus habendi molendinum alibi non conſiſtere defendi poteſt n. 21 p. 757

Molendinum ſolo non uſu amittitur n. 26 p. 562

*Militum.*

Militorum liberi *t. p.* 174

*Monachus.*

Monachiſmus non eſt dignitas n. 33 p. 66.

Monachus eſt quaſi ſervus mundialis, & propria bona habere nequit n. 112 p. 615

Monachi tamen non ſunt Presbyteri n. 27 p. 1047

Monachorum teſtamenta n. 28 p. 1200.

Monachi parentibus etiam Lutheranis ſuccedunt, modo, non ſint Capucini *t. p.* 1258.

*Moneta.*

Münzen / wenn ſie gar verruffet / n. 30 p. 707

Moneta falſa cuſora n. 6. 9 p. 1613

Monetam falſam expendentes n. 10 p. 1613

Monetam radentes, granulantes n. 12. 13. p. 1613

*Monopolium.*

Monopolium exercere jure Juſtinianeo prohibitum, atque uſurpantes ejus pœnæ confiſcationis bonorum & exilio perpetuo ſubiecta n. 17 p. 902.

*Monſtrum* vid. *Partus*

Monſtrum ex capite perfectum humanum dum n. 28 p. 52. Non baptizandum *ibid.* An liberis certaſcendum *ibid.* & in [*] Non prodeſt matri in SCto Tertulliano *ibid.* p. 53 in [**]

*Monumentum.*

Monumentum reſtaure religionis eſt *t. p.* 418.

*Mora.*

Mora eſt injuſta rei faciendæ dilatio *t. p.* p. 926. mora quomodo committatur *ibid.*

Ubi periculum non eſt in mora, ibi in ipſa terris realis mora non habet locum n. 13 in [*] p. 105 in [*]

Mora utrique ſua debet eſſe nociva n. 10 p. 525. ubi utrinque mora concurrit, ibi locus compenſationi n. 13 p. 526. *t. p.* 234.


Ob

*Mo*

Ob moram periculum est morati *n.* 30 *p.* 524 *n.* 35 *p.* 485

Mora obligationem perpetuat *n.* 35 *p.* 512 *n.* 99 *p.* 938. eadem re emtâ *n.* 100 *p.* 938

Moram purgat Emphyteuta, si ante declarationem Domini canonem offert *c. p.* 318 cum usuris *n.* 70 *p.* 323

Nemo ex sua mora commodum pretendere potest *n.* 20 *p.* 526 *n.* 48 *p.* 932.

Moram non committere, vel commissam purgare, paria sunt *n.* 20 *p.* 526

An contra Legem Commissoriam commissa mora ab emtore purgari possit invito venditore? *c. p.* 731 *n.* 24 *p.* 734.

Tutius hoc hoc, quamdiu venditor non declaravit, se hoc pacto velle uti *n.* 9 *p.* 773.

Mora soluto purgatur, quam debet *n.* 19 *p.* 790.

Ut quis in mora constituatur, sine dubio interpellatione opus est *n.* 9 *p.* 733 *n.* 85. 40 *p.* 937 *n.* 91 *p.* 1182.

In contractu venditionis non requiritur interpellatio *c. p.* 801.

Mora hic non ex persona usufructuarii, sed ex re *n.* 117 *p.* 815

Quando sit mora ex re *c. p.* 926 *n.* 91 *p.* 937.

Quoties quantitas praestanda, ob moram debentur usurae: quoties vero species praestanda, ob moram debentur interesse *n.* 96 *p.* 657 *n.* 50 *p.* 671 *n.* 92 *p.* 782.

Quoties prior mora per posteriorem purgatur, toties sola posterior nocet *n.* 17 *p.* 790

Vocabulo morae, simpliciter posito, venit & regularis mora, i. e. quae per interpellationem constituta, intelligitur *n.* 116 *p.* 815

Mora in emtione & venditione tunc committitur, quando res tradita, & fides de pretio habita est *n.* 116 *p.* 815

-- lucidente, cessat interesse *n.* 14 *p.* 872.

-- perpetuat obligationem, videtur obligationem usurarum & fructuum, cumulare periculum rei in debitorem *c. p.* 926 *n.* 98 *p.* 1182

-- constituta continuantur usurae *n.* 22 *p.* 629

-- non praesumitur, ubi solutio incerti-tudinem ... *n.* 71 *p.* 935 *n.* 88 *p.* 937

*Moratorium.*

Contra Edictorum moratoriorum impetrationem, licitè impetratur *n.* 7 *p.* 99

*Mo*

Moratorium non solùm creditori usurarum, licet usura hoc est, quoad contra moratorium, non exigantur *n.* 72 *p.* 935

*Morales actus* vid. *Actus.*

*Morbus.*

Morbus est corporis imbecillitas corporis *n.* 24 *p.* 911

-- excusat à compurgatione *c.* & *n.* 24 *p.* 117

-- relinquit locum restitutioni in integrum *c. p.* 234

-- sonticus *n.* 7 *p.* 1072

*Mores.*

Quae quis in se probat, in alio improbare non debet *n.* 24 *p.* 290

*Morgengabe.*

Morgengabe quid? *n.* 38 *p.* 983 *p.* 1008.

-- Tam à viduo, quam juvene praestanda *n.* 50 *p.* 1017

*Moriens.*

Morientes velle desinit *n.* 40 *p.* 486 *n.* 121 *p.* 1531

*Mors.*

Mors est ultimum terminus voluntatis *n.* 96 *p.* 41 *n.* 90 *p.* 1495

-- omnia solvit *n.* 57 *p.* 607

-- est vel naturalis, vel civilis *n.* 34 *p.* 1302

-- non praesumitur, nisi de absente LXX. annis majore *c. p.* 299.

-- probatur per duos testes, aliquando etiam per Acadiam, aut conjecturas *n.* 46 *p.* 103

-- loco juramenti esse dicitur *n.* 150 *p.* 465

Mortuo causa capitis sive capio *n.* 16 *p.* 1214

Si non constat, quis primum mortuus fuerit, quae praesumtio locum habeat? *n.* 3. *p.* 1204.

Mors revocat mandatum, quae ad beneplacitum conceditur *n.* 102 *p.* 242

Mortuus non praesumitur esse locutus *n.* 48 *p.* 948

Mortuorum Liber debet esse Rylus *n.* 13 *p.* 1214

*Mortuus.*

*Tit.* De mortuo inferendo & sepulchro aedificando *c. p.* 418

Si quis mortuum inferre impeditur *c. p.* 411.

Mortuus ob debitum arrestari non potest *c. p.* 411.

Pro mortuo sepulturam praestamendam, in debeo solum *n.* 12 *p.* 413

*Mo Mu*

Cum mortuo quid conveniri possit *n.* 44 45 *p.* 416

Mortuorum translatio per territorium magistratui indicanda est *n.* 58 *p.* 417 *c. p.* 418. Ob solam religionis diversitatem nihil expedandum *ibid.* Pontifici verò pro numero Ecclesiarum per quas deducitur cadaver, idem exigere solent heu moratorium, ac si ibidem sepelirentur *n.* 8 *p.* 418

Ne mortui detineantur aut venantur curabit magistratus *n.* 58 *p.* 417

Non omnis moriens est Johannes Evangelista *c p.* 443

Nullus moriens praesumitur immemor salutis aeternae *n.* 199 *p.* 465

*Mulcta.*

Mulcta à poena differentur *n.* 46 *p.* 1641.

Jus mulctandi competentes magistratibus inferioribus competit *n.* 3 *p.* 120

*Mulier* vid. *Femina.*

Mulier gravida excusatur si non comparuit in judicio *c. p.* 117 & *ad* [illegible]. & *n.* 8 Torquenda non est *c. p.* 44. Neque torquenda *n.* 30 *p.* 52 multo minus supplicio afficienda *n.* 25 *p.* 52 in [*]. Postquam peperit sumto supplicio affici potest *n.* 30 *p.* 53

Mulier purgationi causa corporis datur *n.* 2 *p.* 1041

Quod, si mulier ventris nomine possessionem per calumniam obtinuit? *c. pag.* 1041.

Mulier tempore graviditatis à praestatione juramenti immunis non est *n.* 25 *p.* 52 in [*] & *n.* 30 *p.* 53

Mulieres inhonestae ex violatis pelli possunt ut honestae matronae & virgines contemperentur *n.* 20 in [*] *p.* 405

Mulierum appellatione omnes veniunt, quae sunt foeminini sexus *n.* 4 *p.* 1196

*Municipium.*

*Tit.* Ad municipium & de incolis *c. p.* 1685

Quando municipii, magistratus non sunt *p.* 79.

Municipes *c. p.* 1685 *n.* 6 *p.* 1687

*Munus.*

*Tit.* De muneribus & honoribus *c. p.* 1692

De munerum divisione ac impositione *n.* 3. 5. 9 *p.* 1693 *n.* 2 *p.* 1711

Impôniuntur secundum proportionem Censuum *n.* 12 *p.* 169

A muneribus quamodo quis excusetur? *c. p.* 1694.

*Mu*

*Munus*, ein Ambt/ vid. *Officium*.

*Muri*s proteneuſeam *t. p.* 1008

*Murus.*

Muri Civitatum etiam municipalium, ſancti ſunt *t. p.* 68 in [*] *n.* 16 *p.* 37 *n.* 18 *ibid.* Illorum violatres arbitrariè puniuntur *ibid.* & *n.* 19 niſi hoſtili animo facta ſit *ibid.*

Murus abſque conſenſu principis ædificare non, reficere tamen licet *n.* 4 *p.* 1702

*Mutatio.*

Mutatio Legum non facile permittenda *t. p.* 25

-- Libelli vid. *Libellus*.

-- non præſumitur *n.* 95 *p.* 272 *n.* 106 *p* 273.

Mutationem allegans, eam probare tenetur *n.* 6 *p.* 1098.

Quod non mutatum, cur ſtare prohibeatur? *n.* 71 *p.* 294 *n.* 8 *p.* 1050.

Mutatio, quæ caſu contingit, voluntaria non cenſetur *n.* 28 p. 1202.

Mutatio religionis ob lucrum turpis *t. p.* 1209

Ob mutatam Religionem Catholicam filios exhæredare ſolent *n.* 8 *p.* 1261.

Mutſchierung.

Eſt ubi alternativè uſusfructus aſſignatur *n.* 19 *p.* 328 *n.* 43 *p.* 388

*Mutus.*

Mutus puniſcitur *n.* 63 *p.* 148

-- an torqueri poſſit? *n.* 52 *p.* 1630

*Mutuum.*

Mutuum quid ſit? *t. p.* 418

Ejus diviſio *t. p.* 419. fit conſenſu *ibid.* & traditione *ibid.*

-- ultra quam datum fuit, non contrahitur *t. p.* 419 *n.* 18 *p.* 424.

In mutuo tantundem reſtituendum, quid verò ſit tantundem ſæpe non adeo liquidum eſt *n.* 49 *p.* 428 & *ſeq.* in [*]

In mutuo res in genere reſtituitur: Eben vergleichen *n.* 4 p 541

Mutuum dare impediuntur, furioſi, mente capti, pupilli, minores curatorem habentes &c. *t. p.* 419

Mutuo à pupillo dato, creditor non ſolum verſionem in rem probet, ſed etiam neceſſitatem mutui accipiendi *num.* 10 *p.* 1068

Mutuum transfert dominium & omne periculum *n.* 120 p. 552

Mutuum accipiens, qui ſe contrahendo validè obligare *t. p.* 419. Et neglige-

*Mu Na*

re non prohibentur, ut luxurioſi, &c *ibid. n.* 31 *p.* 426.

Mutuo dari poſſunt res fungibiles creditoris propriæ *t. p.* 419

Mutuum de rebus alienis non ſubſiſtit *t. p.* 420.

-- an ſit contractus realis? *n.* 3 *p.* 422 *n.* 14 *p.* 423

Quo ad eff. ctum obligandi eſt μονόπλευρος *n.* 5 *p* 422.

-- præſumitur *n.* 7 10. p. 423

-- an rectè in Civile, naturale & mixtum dividatur? *n.* 8. 11 p. 423

Eſt vel fœneratitium, vel gratuitum *t. p.* 419 *n.* 12 *p.* 423. Omne mutuum ex mora eſt fœneratitium *n.* 12 p. 423

Quid ſi diverſum animum habeant Dans & accipiens? *n.* 16 p. 424

Mutuum conciliatum *n.* 26 *p.* 424

In mutuo monetario reſpiciendum eſt tempus contractus nullo habito monetæ diſcrimine *n.* 49 p. 427.

*Lit. N.*

*Naſcendus.*

Naſcendi pro natis habentur, quoties de commodo illorum quæritur *t. p.* 44 & *n.* 24 *p.* 51 & 51 in [*]

Tres portiones naſcendis aſſervandæ *n.* 25 *p.* 52 etiam tertio ſeil. matri proſunt *n.* 30 *p.* 53.

Aliud eſt perfectè, aliud perfectum naſci *n.* 18 *p.* 1120

*Naſus.*

Naſus adulteris ex Lege Leonis amputabatur *n.* 18 *p.* 1593

*Natio.*

Ex qua natione quis ſit oriundus in delictis refert *n.* 24 *p.* 1629

*Nativitas.*

Nativitas facit municipem *n.* 91 *p.* 271

*Naturalis* vid. *Liberi*.

Naturale vinculum non tollitur per ea, quæ ſunt civilia *n.* 27 *p.* 95.

Naturalia contractus, quæ ordinariè adeſſe ſolent, per pactum tamen tolli poſſunt *n.* 117. 118 122 p. 711

Naturalia ſunt vel interna, vel externa *ibid. p.* 712

Naturaliter interdum pro eo ponitur, quod recipi poſſit morte eſt *n.* 120 *p.* 710

*Na Ne*

Ex natura contractus eſſe dicuntur, quæ tacitè contractui inſunt *n.* 85 *p.* 813.

*Nauta.*

*Tit* Nautæ, caupones, ſtabularii, ut recepta reſtituant *t. p* 247

*Tit.* de Nautico fœnore *t. p.* 938.

*Tit.* Furti adverſus nautas, caupones & ſtabularios *t. p.* 28

Nauta qui navem exercet *n* 17 *p.* 569 Ob naufragium punitur *n.* 8 *p.* 572

Nautæ non ad contrahendum, ſed laborandum conſtituuntur *n.* 18 *p.* 568

Si nauta ob morbum navigare impeditur, non tenetur ad intereſſe *n.* 140 *p.* 847

Nautarum contractus tacitam habent clauſulam: wenn Wind und Wetter nicht zuwider *n.* 147 *p.* 847

Nauta adverſa tempeſtate in portum quem non intendebat delatus, inde diſceſſurus, non ſolvit telonium *n* 21 *p.* 1289

Na icularii erant, qui annonam publicam advehebant *n.* 75 *p.* 1271

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Ne

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Die

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Pa

*Lit. P.*

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Pactum nudum non civiliter, ſed naturaliter obligat c. p. 135. n. 14. p. 142.

Pactum mixtum c. p. 135 n. 13 p. 142.

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Pactum, ut quis extra territorium judicet, non valet n. 65 p. 93

-- Commiſſorium vide commercium *ſupra*

-- Confeſſorium n. 93 p. 158

-- nudum æquiparatur ſtipulationi n. 8 p. 148

Pacta purpurarii non ſunt obligatoria n. 6 p. 856.

-- in continenti adjecta videntur eſſe pars contractus, cui accedunt c. p. 136. n. 142 p. 714 n. 145 n. 52 & 54 p. 147 in [*]

Nihil refert, utrum quid ſtatim inter ea, an ex intervallo contractui adjectum. Si enim non valet vi contractus valebit tamen vi pacti n. 139 p. 713 n. 149 p. 714. n. 29 p. 728.

Pa

Pacta adjecta, ſi de eſſentialibus quid tollunt, ipſum contractum transformant; ſi de naturalibus vero, &c. 694 & 95

-- eſſectum aliquem habent, ſi negotio mutuam conformiter adjiciantur n. 137 p. 713.

-- ex intervallo adjecta n. 55 p. 147. n. 136 p. 156 c. p 695.

Pactum legitimum n. 3 p. 550

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Pacisci poſſunt, qui non impediuntur, nec prohibentur c. p. 137.

Pacta ut ſint efficacia, debet adeſſe cauſa c. p. 137 Non contrahit n. 61 p. 148. n. 88 p. 151.

Paciſci poteſt de rebus corporalibus, & quæ ſunt in commercio c. p. 138 n. 76 p. 150

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An etiam de hæreditate? c. p. 138. n. 78. 79 80 81. 84 85 p. 150

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Pacta hæc ſunt, vel conſervatoria, acquiſitiva, reſtitutiva, & renunciatoria n. 3 p. 747

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Pactum, quomodo ex parte sui, & ex parte alterius unde decedat? n. 147 p. 714

Pacta ſemper producunt rem *ibid.* n. 151 p. 724

*Pactum de non alienando.*

Pactum, ut dominus rem ſuam alienet c. p. 138 n. 9 p. 151. ſi ipſi alienationi impugnat, ipſa alienatio nulla eſt n. 92. 94 p. 151.

Pacta contractui b. f. adjecta, neque valida ſunt, quam ſi natura contractus tam ſunt n. 14 p. 519

Pactum, naturæ contractus adverſum, ſi non vi contractus, tamen vi pacti ſuſtinetur n. 139 p. 713

Pactum contractui adjectum, non obſervatum, contractum non reſolvit, ſed ſuæ locum aliquem ad interesse n. 92. 94 p. 151

-- non afficit eum, ſed perſonam n. 95 p. 151 n. 9 p. 519

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Pacta nuda de jure Civili non pariunt actionem c. p. 138. etiam tamen effectus n. 95 p. 172.

Omne pactum ſed bonæ fidei inter eſt obligatorium n. 15 p. 142. n. 57 p. 184. 96 p. 152 in [*] n. 1, 6 p. 158.

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Pactum aptum ad tollendam, vel ad producendam obligationem efficax eſt n. 29 p. 499.

Pacta, quæ veritatem gratis inita, non valent n. 61 p. 148

Ex omni pacto, ſuper negotio Legibus non interdicto initio, nudo carpo aliquo n. 159 p. 719

Pactum à jure alium poteſt, quicquid alias partes ſtipulatio n. 139 p. 713. n. 149 p. 714.

-- continenti adjectum, non parit actionem ex contractu reſidentem n. 140 p. 713

-- quo quis ſuccedit hæreditati contractus, de jure civili non valet c. p. 138 n. 96 p. 293

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-- de retrovendendo c. p. 696. n. 106 p. 710.

In pacto de retrovendendo prior venditor non tenetur dominium rei venditæ n. 156 p. 715

Pactum de emendo differt ab ipſo contractu n. 154 p. 714.

-- tradente per pronunciatum *ibid.* p. 715.

-- reluitionis, ſi ita fuerit initum: bis nach 10 Jahr wieder ein zulöſen / tunc poſt 10 annos reluitio relata: ſi vero ad tempus auf 10 Jahr wieder-löslich tunc elapſo decennio dominium inops n. 158 p. 715

Pa

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Pacta ſucceſſoria, [illegible] validitate non denegantur, ſive [illegible], ſive ob illuſtrium perſonarum [illegible] n. 3 p. 747
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-- [illegible] inter vivos, per ſaltem [illegible] n. 2 p. 1018
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Paraphernalia.
Paraphernalia n. 19 p. 681 r. p. 1008 n. 42 p. 1010 n. 37 p. 1174
-- [illegible] n. 78 p. 840.
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Tit. De agnoſcendis & alendis liberis r. p. 1037

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Partus in utero exiſtens omnia jura in tempus naſcendi integra reſervat r. p. 44 [illegible] ibid. [illegible] n. 27 p. 52.
Prodigia [illegible] ibid. n. 28.
An [illegible] ibid. & in [*] [illegible] r. p. 44 [illegible] n. 20 p. 54 Ad hoc non [illegible] n. 25 in [*] p. 52 [illegible] ibid.
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Legitimus naſcitur poſt nuptias [illegible] 7 [illegible] r. p. 53 [illegible] n. 5 p. 56 n. 7 in [*] ibid.
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Deſtinatio partus IX & X [illegible] XI menſis r. p. 54. [illegible] n. 6 p. 56
Legitimus præſumitur, [illegible] n. 4 p. 56. [illegible] ibid. & in [*]
Ex [illegible] Legitimus eſt, [illegible] n. 8 in [*] p. 56.
In dubio pro partu [illegible] n. 9 [illegible] n. 7 p. 56
Partus Legitimus [illegible] n. 8 p. 56

*Pa*

Parum, ut teſtamentum rumpat, perfecte naſci debet n. 11 p. 1121.

Ut perfecte natus dicatur ad hoc non requiritur, ut ejus clamor intra 4 parietes fuerit auditus n. 12 p. 1121

*Pater.*

Pater is eſt quem Legitimæ demonſtrant Nuptiæ n. 23 p. 51 & 56 in [*]

Pater communicat liberis dignitatem *ibid.* in [*] habet jus circa res liberorum *c.* p. 55 Et ſi cum his habetur pro una perſona *ibid.* n. 24 p. 56. Etiamſi mortuus ſit nihilominus liberi legitimari poſſunt *c.* p. 55.

Dubitans ſe eſſe patrem, non tenetur propterea, credere ſe patrem eſſe, quod partus poſt nuptias natus ſit n. 8 p. 56.

Filium ſanguinolentum in caſu extremæ neceſſitatis vendere poterat n. 21 p. 59

In Liberos ut JCtorum habet jus vitæ & necis n. 22 p. 59

-- Habet jus in bona liberorum n. 23 p. 59. in [*] 1630

Parentes ad alendum & educandum compelli poſſunt n. 25 p. 66.

Liberi legitimari poſſunt *c.* p. 55

Pater Liberos vindicat, & ſibi exhiberi poſtulat *ibid.*

Pater liberis pupillariter ſubſtituit *ibid.*

-- tutores dat teſtamento *ibid.*

— Legitimare poteſt teſtamento n. 27 p. 58.

*Paterfamilias.*

Paterfamilias, qui ſui juris eſt *c.* p. 55

Non requiritur pubertas, ut jus imperandi habeat n. 1 p. 55

Paterfamilias is eſt, cui acquiritur *ibid.*

Parentes aut cognati lacientes cognatum mediante juramento purgatorio non tenentur indicare *c.* p. 1561 num. 3. 4. p. 1562.

Parentes cum liberis dividentes, plerumque plus ſibi retinent, quam in liberos conferunt n. 38 p. 1245 n. 24 p. 52

Parentes reprehendi merentur, qui liberos à S. Cœna arcent, ut dicitur in [*] ut gaudeant *ibid.* in [*]

Parentes ſine peccato non poſſunt parum abeſſe n. 8 p. 56.

Contra parentes non datur reſtitutio in integrum *c.* p. 204

Parentum perſona ſancta ſunt *c.* p. 68

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Parentes non poſſunt in jus vocari, niſi impetrata venia *c.* p. 101

A ſiliis non ſunt in jus vocandi num. 3 p. 110

Parentes magis in liberis, quam in ſe ipſis torquentur n. 16 p. 211

Parentes non conveniuntur de dolo *c.* p. 217.

Si magna parentis ſit atrocitas, ipſi reverentia non debetur n. 11 p. 1400

In Saxonia etiam ab inteſtato excluduntur fratres n. 19 p. 280

Parentibus debetur Legitima, & ſæpenumero vel conſiliando parentes à legitima excludentes irrationabile reputatur n. 66 p. 294.

Parentes liberis ſuccedunt *c.* p. 1259.

*Patria poteſtas.*

Acquiritur, etiam poſt nuptias patriciatu n. 3 p. 55

Patria poteſtas *c.* p. 55. eſt ex jure natura *ibid.* propria civium Romanorum *ib.*

Patria poteſtas tribuit patri facultatem, ad miniſtrandi & fructus percipiendi in bonis Liberorum, exceptis caſtrenſibus n. 23 p. 59

Patria poteſtas quot modis acquiritur? n. 2 p. 55. Non competit matri *ibid.*

*Peculium.*

*Tit.* De peculio *c.* p. 598.

*Tit.* De peculio legato *c.* p. 1193.

Peculii definitio & diviſio *ibid.*

Ob peculium caſtrenſe res mobiles & immobiles ratione militiæ acquiſitæ pertinent *c.* p. 598. n. 10. in [*] n. 15 p. 604.

*Tit.* Quando de peculio actio annalis eſt *c.* p. 615.

Peculium dicitur quaſi patrimonium *c.* p. 598.

Peculium caſtrenſe & quaſi, filiusfam. ut paterfamilias habet n. 26. p. 60. n. 20 p. 593 *c.* p. 598. 99.

Peculium non computatur in legitimam *c.* p. 286. n. 91. p. 296.

Quomodo pro diverſitate peculiorum pater vel filius judicium ſubeunt *c.* p. 253 *c.* p. 601.

*Tit.* De caſtrenſi peculio *c.* p. 1684.

Quaſi caſtrenſi annumeratur à Principe donatum n. 75. p. 610.

Peculium vocatur honorarium Advocatorum *c.* p. 146. Clericorum *c.* p. 599 n. 30. p. 605.

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Peculio caſtrenſi computatum indolem naturam peculii caſtrenſis n. 13. p. 309. n. 107. p. 814

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Pecunia lato ſenſu pro re fungibili ſive qualitate accipitur n. 2 p. 916.

Pecunia in re vendita, abſcondita, manet venditoris *c.* p. 798

Pecuniæ uſus conſiſtit in abuſu n. 104 p. 814.

Pecunia dotalis cautum, regulariter non ſit dotale n. 42 p. 1016.

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Pecunia non ſemper cum fructu exponi poteſt n. 127 p. 761.

Pecunia in refectionem ædium credita tribuit jus tacitæ hypothecæ *c.* p. 890 n. 35. 36 p. 894

Pecunia ad res mobiles refertur, etiamſi præſidii cauſa repoſita, ſervata, cumbus, aut prædiorum emtioni deſtinata, vel ex prædii venditione redacta ſit *c.* p. 68.

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Nomine pecuniæ numeratæ, non veniunt nomina, die auſſtehende Schulden n. 30 p. 75

Pecunia numerata non ſemper præſentem notat pecuniam n. 81 p. 707

Ein belegtes Capital habetur pro re immobili n. 30 p. 75

Pupillen-Gelder wuchern ſich ſelbſt n. 97 p. 938.

Melius eſt habere Ein Zinßbahres-Capital, quam pecuniam otioſam n. 128 p. 761.

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Pecunia [illegible], regulariter [illegible] non est. Excipe pupillum, Ecclesiam c. p. 706 n. 12 p. 709 n. 12 p. 690

Nec quæritur, unde pecunia, quæ [illegible] venerit, sed [illegible] c. p. 79 p. 657

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Pecuniam [illegible] pro [illegible] dando, aut [illegible] valerer n. 6. 7. p. 489.

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[illegible] n. 57. p. 810.

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*Persona.*

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Longiorem Procuratorem constituere ac mittunt t. p 180.

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In loco delicti sortiuntur forum, ratione suæ dignitatis n. 127 p. 215 in [*]

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Obligata manet, sive possideat, sive non n. 6. p. 238.

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Hi fuerunt Germanorum homines propii n. 16. p. 49.

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Pharmacopolium ad usum aliam non pertinet *ibid.*

Pharmacopolium mobilibus, an immobilibus accensendum? n. 67 p. 811

*Philosophia, Philosophus.*

Non datur absurda sententia, quam non defenderit Philosophus n. 17 p. 775

Philosophiæ Professorum numero non continebantur n. 1 p. 1707. 1321 & seq.

*Pia causa.*

Pia causa summatim tractantur n. 30. p. 90 n. 43. p. 92.

Ratio formalis piarum causarum est evidens necessitas n. 5. p. 198 in [*]

Ad piam causam referuntur Ecclesiæ, Hospitalia, Scholæ, Academiæ, Pauperes, Redemtio Captivorum, Studiorum Causa n. 54. p. 1151.

*Pictura.*

Pictura ad se tabulam trahit n. 56. p. 1328

*Pietas.*

Quæ pietatis causa impenduntur, non repetuntur n. 5. p. 198

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Pignoris divisiones, *ibid.*

Jus pignoris semel constitutum, manet, etiamsi res fuerit aliena n. 27 p. 735

Pignus semper majoris pretii est, quam debitum, & hoc semper continet usurarum pravitatem n. 38 p. 735.

Soluto aut deposito in judicio debito, hypotheca aut jus possidendi pignus exspirat n. 39 p. 735

Pignoris possessor jure Hamburgensi & Lubecensi prævalet n. 24 p. 901.

Pignus vendituro creditor, id denunciare debitori per tria intervalla n. 14. 15 p. 904 n. 18 p. 905.

Pignus solvitur solutione t. p. 906.

Extinctio debito, extinguitur pignus t. p. 906. Etiam tamē remisē potest n. 5. 9. p. 906.

Pignus generaliter captum, ut etiam futura hypothecas comprehendat n. 8 p. 557.

Pignus est, quod creditori in securitatem crediti constitutum est n. 7. p. 91. t. p. 552.

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Pignus est contractus consensualis n. 2. p. 556.

Pignus diverso respectu, est jus personale, & Reale n. 7 p. 91.

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Creditor pignoratitius à servitutibus immunis non est. n. 12 p. 114. in [*]

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Periculosum est, contractum pignoratitium inire n. 55 p. 561.

Pignus etiam hoc pacto dari potest, ut ejus usus sit loco solutionis, & tunc dicitur, das Pfand habe sich los gessen n. 39 p. 560.

De Retentione pignoris, vid. *Retentio Pupillo,* Tutore muore, pignus confirmatur n. 10 p. 557.

Quæ pignora confirmantur, & quæ recipi non dicuntur vid. t. p. 553 n. 11. 12. 13. p. 557. t. p. 876 n. 17. p. 881. n. 20. p. 883. t. p. 896. Etiam est incompatibilis n. 1. t.

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Pignore generali conſtituto, excipiuntur tamen res quotidiè neceſſariæ, & maximè cara t. p. 876. n. 13 p. 881 n. 29. 883.

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*Tit.* Qui potiores in pignore, vel hypotheca habeantur, & de his, qui in creditorum locum ſuccedunt p. 898.

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*Tit.* Quibus modis pignus, vel hypotheca ſolvitur t. p. 906.

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*Pignus* Legale, ultra caſus legis non eſt extendendum t. p. 889. etiam per conſuetudinem induci poteſt n. 4. p. 891.

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*Pignus* à defuncto conſtitutum, ſucceſſorem obligat, niſi hic inventarium confecerit n. 26 p. 882.

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Polygamia ſimultanea, quæ una plurium uxores pari notatur constrictio tanquam fuit permiſſa, et vero, quæ unum plures uxores ducat, multis populis uſitata fuit *t. p.* 985 *n.* 31. 33. 34. 35 *p.* 992

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Pontificii Clerici JCtioſi contemnt *n.* 9 *p.* 29.

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*Populus, Popularis actio.*

*Tit.* De popularibus actionibus *t. p* 15 0

Popularis actio ante litem conteſtatam cedi nequit, niſi de privato damno & intereſſe inſtituatur *n.* 64 *p.* 753

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Populares actiones exiguntur anno, quatenus ſunt pœnales, quatenus vero rei perſecutoriæ, earum perpetuæ ſunt *n.* 3 *p.* 1571.

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Poſitiones debent eſſe ſimplices, pertinentes & claræ *t. p.* 395

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Ponens omnes poſitiones veras fatetur, quod ſecus eſt in articulis *t. p.* 395

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Poſitiones utiles quidem, neceſſariæ tamen non ſunt *n.* 15 *n.* 396

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*Poſitivus.*

Poſitivus interdum pro ſuperlativo ponitur *t. p.* 539

*Poſſeſſio.*

*Tit.* De acquirenda, vel amittenda poſſeſſione *t. p.* 1324.

*Tit.* De bonorum poſſeſſione & reliqua huc pertinentia. vid. ſub Bonorum poſſeſſio re.

Jus poſſidendi ad dies vitæ alicui concedi poteſt *n.* 44 *p.* 76.

Cauſa poſſeſſionis ſunt ſummariæ *n.* 70 *pag.* 90

Minus eſt in poſſeſſione eſſe, quam poſſidere *n.* 3. *p.* 1413. *n.* 33. *p.* 116. in [*] *n.* 4. *p.* 1324.

Faciens per interdictum, quam rei vin-

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Qui poſſeſſionem negat, & poſtea mendacii convincitur, poſſeſſione privatur *t. p.* 307.

Aliquando manu militari transfertur poſſeſſio. Ad illum pertinet poſſeſſio, ad quem utilitas ejus ſpectat *n.* 50 *p.* 51.

Poſſeſſio transfertur naturaliter ocuis, vel traditione inſtrumentorum *t. p.* 1328 *n.* 31. *p.* 1316

Poſſeſſio civilis & naturalis in emtione venditione debet eſſe vacua *t. p.* 794. *n.* 15 *p.* 805

Poſſeſſio contra illum, qui nequit, non vero illum, qui melius, vel æquale jus habet, prodeſt *n.* 25 *p.* 901.

In pari cauſa melior eſt ratio poſſidentis *n.* 24 *p.* 290. *n.* 9. *p.* 489.

Si diverſi non domino vendiderint, potior cauſa eſt poſſidentis *t. p.* 315

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Poſſeſſor juris rei commune ſimul occupare *n.* 83 *p.* 96.

Bona immobilia poſſidens, non ſolidus, ſed nudè promittit *t. p.* 112. *n.* 33. *p.* 1.6 in [*] Item plurimis in locis, ne quidem promittit *ib. d.*

Poſſidere qui dicitur ſive directum, ſive utile dominium habeat, ut Emphyteuta, Vaſallus, Superficiarius, Tutor & Curator propria vel pupilli bona immobilia poſſidens *t. p.* 112. & *num.* 12. in [*] *p.* 114.

Quid ſi poſſeſſor rem immobilem lite pendente alienet, aut bona, laberet, nunc tunc ſuadet? *n.* 12 *p.* 114.

De poſſeſſore oberato *n.* 3 *p.* 113. *n.* 32. *p.* 119.

Poſſeſſio immemorialis per teſtes, ſtandum ſemper probari poteſt *n.* 70 *p.* 1344

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Poſſeſſio ratione acquiſitionis facti eſt, & non niſi naturaliter apprehenſa acquiritur *n.* 45 *p.* 1758. *n.* 41 *p.* 1178 *t. p.* 1324 *n.* 10 *p.* 1327. *n.* 37 *p.* 1331.

Poſſeſſio multis modis dividitur *t. p.* 1324 *n.* 12. 13. *p.* 1328.

Poſſeſſio an ſit ſpecies juris in re? *n.* 5. *p.* 70 *t. p.* 1324

Poſſeſſio ſpoliatur tribus modis *ibid.*

Falſi poſſidere dicitur, qui ſe malitioſè pro poſſeſſore obtulit *t. p.* 498

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Et qui dolo deſiit poſſidere *ibid.* num. 12. *p.* 300. In aliquo ad exhibendum, teneri ad interesse *t. p.* 302.

Poſſeſſionis interruptio, vel, *uſurpatio.*

Deinde omnes, quod pupillorum ſunt, nomine ejus conveniri, nisi poſſideat n. 17 *p.* 367 *t. p.* 375

Poſſeſſ. Civilis aut Naturalis, amittere ſolum animo, liberetur *t. p.* 306.

Regulariter ab eadem ſua non conveniri *t. p.* 304.

*Tit.* Ne vis fiat ei, qui in poſſeſſionem miſſus erit *t. p.* 1303

In possessione hereditatis ſuffecit, aliquam tempore ſucceſſione poſſidere *p.* 289 n. 35. *p.* 301 Culpam regulariter non præſtat *t. p.* 298 Licet sit quandoque delinquentem n. 36 *p.* 302.

Bonæ fidei poſſeſſor habet ſolum dominium n. 8 *p.* 309.

Bonæ fidei poſſeſſor etiam bonam conſcientiam quoscunque fructus perceptos ſuos facit *t. p.* 307. n. 34 *p.* 310 ſi verò locupletior erit cum damno veri Domini n. 38 *p.* 310.

Poſſeſſor etiam violentia in poſſeſſione defendendus, ſi violentiam non commiſit contra illum, cum quo in poſſeſſorio litigat n. 2. *p.* 1401.

Qui etiam poſſidet, adverſum poſſidere præſumitur n. 2 *p.* 1402.

*Poſſeſſorium vel, Petitorium*

Pro poſſeſſore præſumitur, ubi non liquido de mala fide poſſeſſoris conſtat n. 14. *p.* 1678.

Poſſeſſorem ſuſtinet eſſe poteſt, & petitorium conſiſtere *t. p.* 164.

-- Eſt vel ſummarium & ſummariiſſimum n. 9. *p.* 264.

In poſſeſſorio ſummarium, non aliud magnum propoſitionum fidem n. 9. *p.* 264 n. 7 *p.* 1433

Poſſeſſorium regulariter præfertur petitorio n. 176. *p.* 282.

In poſſeſſorio ad admittuntur exceptiones altioris indaginis, neque remedia ſuſpenſiva n. 9 *p.* 261 n. 12 *p.* 1387 De de ſolo actu poſſeſſionis, non de jure quæritur n. 69 *p.* 266. n. 243 *p.* 852 n. 22 *p.* 1387

Poſſeſſorium & petitorium ab eodem Judice terminari debet, quod apud Romano-Catholicos ſervatur n. 11 *p.* 400

In Poſſeſſorio ſummariiſſimo regulariter non eſt locus litis denunciationi n. 43. *p.* 920.

In Poſſeſſorio ſummariiſſimo de ſolo poſſeſſionis facto quæritur n. 8 *p.* 1396.

In poſſeſſorio ſummariiſſimo quidnam ſit, que demonſtrare, cum Beſcheinigung oder Beybringung n. 44. *p.* 944.

Poſſeſſorium ſummarium non attenditur, ubi de Regalibus diſputatur n. 40. 41 *p.* 1333

In poſſeſſorio Judex non permittet ſemper petitorio n. 141 *p.* 1387

Cumulari eſt inter poſſeſſorio, quam petitorio *t. p.* 1383

Unum dun vel minus poſſeſſio ſufficit in poſſeſſorio n. 1 2. *p.* 1408

Poſſeſſorium ſummarium vel ordinarium n. 2 *p.* 1471

Poſſeſſorium & petitorium quoniam cumulentur n. 15 19 *p.* 1387 n. 20 *p.* 1388

Poſſeſſorium aliorum pupillorum ſummariæ prorſus ordinatur n. 3. *p.* 1419.

Poſſeſſorium retinendæ poſſeſſionis cumpotest cumulari cum petitorio *t. p.* 1384 n. 5 *p.* 1385 n. 28 *p.* 1387

Poſſeſſor regulariter non probat, niſi contra illum ſit præſumtio juris n. 9 *p.* 357 n. 7 *p.* 385.

In hereditatis petitione poſſeſſor omnino aliquot debet *t. p.* 298. n. 47 *p.* 133

Poſſeſſor b. f. eſt velut dominus n. 13 *p.* 310

Bonæ fidei poſſeſſor regulariter nec ante nec poſt inchoatam actionem tenetur de caſu fortuito: niſi aliter probet, ſi res ſit ſibi redditæ, ſe illam veniſſe & periisse debuiſſe *t. p.* 299. n. 87 *p.* 303 Aliud verò, ſi res apud illum aque ſuſſet periturā n. 40. *p.* 303

Poſſeſſor antepoſitos fructuum quarundarum ante litem contestatam, bonæ ſiſtrum nihil percepturum *t. p.* 299 & 307

Poſt litem conteſtatam aut ſaltem interpellationem degenerat in malafidei poſſeſſorem *t. p.* 298. n. 31 *p.* 302. & hinc omnes fructus etiam percipiendos reſtituit *t. p.* 307

Bonæ fidei poſſeſſor & malæfidei inter ſe different n. 95 *p.* 1128

Malæfidei poſſeſſor in hereditatis petitione omnia reſtituit quæ poſſidere deſiit vel acquirere potuit *t. p.* 298.

Quæ in fructus impendit, deducit *t. p.* 293

In judicio univerſali quæ ad reſtituendum expenſarum Moram agitur, quam in judicio ſingulari n. 44 *p.* 303

Culpam præſtat *t. p.* 298

Propter fructus, quos ipſe dominus percipere potuit, reſtituit n. 21 *p.* 339

Nova mercedem præſtat, quamvis eo uſus non ſit n. 33 *p.* 302

Temporis malafidei poſſeſſor non ſufficit præterea res ante reductum tempore percepti *t. p.* 299

Non præſcribit ſervitutem longiſſimo tempore *t. p.* 325.

Pro poſſeſſore poſſidet, qui ſine causa poſſidet *t. p.* 228

Debitor quæ hereditarie nomine ſolvit *t. p.* 299

*Poſtea.*

Poſtulatum omni ne in materia ſummariarum ſunt in quorum non compreſſibile n. 17 *p.* 1696

*Poſthumus*

Poſthumus nominatus non admittuntur de ven bonorum poſſeſſio contra tabulas n. 8 *p.* 1169

In poſthumum nulla ſupervenienti teſtamentum cadere poteſt n. 8 *p.* 1181. n. 13 *p.* 1182. & ſic cum aliiſque ſubveniuntur tempore n. 1 *p.* 1247

Poſthumus inſtitui conſultum eſt n. 10 *p.* 1120

Quaſi poſthumi ſunt ſilii, vel nepotes, qui poſt conditum teſtamentum vivo patre ſui heredes naſcuntur, aut ſiunt n. 20 *p.* 1120

Poſthumos in teſtamentum exiſtere, præteriti nulli debet n. 22. *p.* 1120.

Poſthumi habentur pro natis, quoties de commodo illorum agitur n. 24 *p.* 52. & n. [*]

Poſthumus, omnis jure in tempore reſervandi tempus omnia. omnes ſit. n. 25 *p.* 52.

Tres perveniunt poſthumo aſſerunt, quia portionem nominatim ex ſecundo n. 25 *p.* 52

Ut Poſthumi notet præſum. ibidem [*]

-- Nondum ſunt naptæ, & ſuis heredibus annumerantur ibid. n. 26.

-- Modo vere naſcuntur ibid.

-- Non prodigati ibid. n. 28.

Poſthumi IX X & tertio XI. unde poſt obitum patris non ſunt legitimi *t. p.* 54.

-- Poſt undecimum menſem editi, regulariter habentur pro illegitimis n. 30 *p.* 57.

*Po*

Si ſingulares circumſtantiæ concurrunt, etiam duo domeſtici pactis pro legitimo haberi poteſt. *ibid.*

-- Duodecimeſtris, non exiſtentibus aliis liberis natis, ſacra præſumptionem expectandæ hæreditatis *ibid.*

In poſthumum nulla cadit ingratitudinis cauſa, & ſic nulla exhæredatio *n.* 24 *p.* 239.

*Poſtulare.*

*Tit.* De poſtulando *t. p.* 164.

Poſtulare eſt ſuum, vel amici deſiderium in judicio exponere *t. p.* 164 *n.* 1 *p.* 167 *in* (*)

Poſtulare eſt ex genere permiſſorum *n.* 1 *p.* 167

Poſtulare poſſunt, qui non prohibentur *t. p.* 165.

Prohibentur autem ſurdi, caci, infames &c. *ibid.*

*Potentior.*

Potentior is non ſolum eſt, qui ratione officii ſui prævalet, ſed & qui opibus & alia ratione antecellit *n.* 13 *p.* 239. *in* (*)

Potentior eſt, qui ipſo debitore ceſſo eſt potentior *n.* 43 *p* 751.

Potentiori actiones cedere non licet *t. p.* 739.

Bona fide tamen id fieri poteſt *ibid.*

Potentior, quis ſit, arbitrio judicis relinquendum eſt *n.* 44 *p* 751.

In potentiorem ex cauſa neceſſaria fieri poteſt ceſſio, *n.* 46 *p.* 751.

*Præceptor.*

Præceptor ob correptionem mortis diſcipulorum agere poteſt *n.* 8 *p.* 401

Præceptores domeſtici, ratione ſalarii ſunt privilegiati adinſtar famulorum *n.* 55 *p.* 1373.

*Præceptum.*

Præceptum de die Sabbatho colendo, an ſit univerſale? *n.* 11. *p.* 121.

Præcepta juris naturæ, ſunt vel principia vel principata *t. p.* 2 Hæc rectè ad jus naturæ referuntur *n.* 24 *p.* 13.

Tertium juris præceptum ſæpe negligenter ut amplectar ſervandum *n.* 19. *p.* 12.

*Præco.*

Præconis ratione officii plena habetur fides *n.* 33. *p.* 106. Eius relatio aliis ſen perſonalis inferior *n.* 56 *p.* 108.

Prædictio dici *n.* 26. *p.* 1577.

*Pr*

*Prædium.*

Prædium urbanum, vel ruſticum ſit, non ex loco, ſed uſu æſtimatur *t. p.* 148

Prædio obligato, etiam fructus obligati cenſentur *n.* 8 *p.* 142

In urbanorum prædiorum illata ſeu invecta, tacitè pignoris loco locatori obligata ſunt *n.* 8 *p.* 142.

Prædium ruſticum dicitur conſue, urbanum verò vicinum *t. p.* 378.

Prædium ita vendi poteſt wie es der beſchaffen Gericht tantum verbum *n.* 93 *p* 709

Prædiorum pretia pro cultura augentur vel minuuntur *n.* 107. *p.* 710.

Prædia minorum quomodo alienanda? *vid. alienatio.*

Prædium obæratum emens, ſimul in ſe recipit, quod creditoribus ſatisfacere velit *n.* 158 *p.* 764.

Prædio cum inventario vendito, inſtrumenta, pecora, frumenta, aliaque ad culturam agrorum pertinentia Geſchirr gſchier &c. vendita cenſentur *n.* 70 *p.* 811

Prædia ruſtica ſin aliam tempus expreſſum in annum ſemper locata *t. p.* 820.

Prædio locato, etiam acceſſoria, modo omnia pertinentia ſimul locata, cenſentur locata *n.* 32. *p.* 837.

*Prædo.*

Prædo non repetit impenſas voluptuarias *n.* 45 *p.* 302 niſi res ſit promercialis *ibid.*

Omnis poſſeſſor, qui rem immobilem ſine ullo titulo occupavit, prædo eſt *n.* 4 *p.* 1533.

Prædo quandoque melioris conditionis eſt quam b. f. poſſeſſor *n.* 8 *p.* 891

*Præfectus.*

Præfectus primario ſuit Magiſtratus militaris *t. p.* 77. poſtea civilis *ibid.* habuit merum imperium *ibid.*

*Præjudicium.*

*Tit.* De exceptionibus præſcript. & præjudicii *t. p.* 1421

Præjudicium propriè eſt exceptio, quæ declinatur cauſarum tractatio, propterea quod præjudicium fiat alii negotio majori cognoſcendo & decidendo. *Impropriè* dicitur ſententia JCtorum in cauſa controverſa pronunciata *n.* 7 *p.* 1427

*Prælatio.*

Jus prælationis quod non cohæret in ſolos hæredes liberos, non verò extraneos,

*Pr*

neque patrem ipſum tranſit *n.* 60 *p.* 759 *n.* 33 *p.* 1371

Prælationis jus, à jure tacitæ hypothecæ differt *n.* 124 *p.* 759 *n.* 28 *p.* 1370

Jus prælationis, quod eſt perſonaliſſimum cedi nequit *n.* 129 *p.* 760.

*Prælatus.*

Prælatus ob correptionem mortis monachorum agere poteſt *n.* 8. 9. *p.* 401.

*Præpoſitus.*

Præpoſitus eccleſiæ, non tenetur ſtare pacto anteceſſoris *n.* 74 *p.* 840

*Præſcriptio.*

Quanto tempore conſuetudo præſcribitur? *n.* 29 *p.* 32

privilegia præſcriptione acquiruntur *n.* 24 *p.* 39. præſcriptio & privilegium contraria ſunt *in* [*] *ibid.*

Præſcriptio etiam in communitatibus prodeſt *t. p.* 1694

Præſcriptio immemorialis, idem quod expreſſa principis conceſſio operatur *n.* 24 *p.* 74 *n.* 47 *p.* 1313. *n.* 72 *p.* 1144. per hanc præſcribuntur res, quas alias ubique cives poſſidere nequeunt, ut JCtus *n.* 41 *p.* 91 canon inſendo res privatas principis *n.* 29 *in* [*] *p.* 222 Non verò ſupremus JCtus *n.* 92 *p.* 97.

Præſcriptio 40 vel 100 annorum ubi locum habeat? *t. p.* 1336.

Præſcriptio longiſſimi temporis *n.* 40 *p.* 1157 *t. p.* 1336 hac præſcriptione res ſtudiis uſucapioni non obnoxiæ præſcribuntur *n.* 39 *p.* 1341

Contra Eccleſiam intra 40 annos præſcribitur *n.* 12 *p.* 72. *n.* 66. 67 *p.* 1344. Eccleſia contra Eccleſiam, præſcribit tempore ordinario *n.* 12 *p.* 72

Præſcriptio 30 annorum, excludit querelam ex capite læſionis *t. p.* 772

De præſcriptione contra actionem hypothecariam *t. p.* 877 *n.* 51 *p.* 886 *n.* 52. *p.* 887 *n.* 54 *ibid. n.* 3 *p.* 1436

Præſcriptio 5 annorum locum habet contra fiſcum bona commiſſa vindicantem *n.* 26 *p.* 1290 in accuſationibus *t. p.* 1434 *n.* 19 *p.* 1437. præſcriptio triennii *t. p.* 1444. *n.* 16. *p.* 1445. præſcriptio biennii *n.* 14 *p.* 1437 præſcriptio annua contra reſcriptum valet *num.* 6 *p.* 36. præſcriptio 6 menſium *n.* 15 *p.* 1437.

Non valenti agere non currit Præſcriptio



n. 8

*Pr*

n. 2 p. 1236 n. 3 p. 235. Actioni nondum natæ non præſcribitur n. 79 p. 963

Tempore belli dormit præſcriptio n. 4. p. 235

An præſcriptio ipſo jure non currat, an vero ope exceptionis eliditur actio? n. 6 p. 235

Præſcriptio contra furioſos & pupillos dormit n. 6 p. 235.

Qui ope ſtatuliberorum valent, numquam præſcribunt i. p. 343

Qui patitur rem ſuam præſcribi, videtur eidem renunciare n. 24 p. 236

Præſcriptiones alias introductæ, ut negligentia puniretur & quisque inquireret in res ſuas n. 24 p. 237

Præſcriptio eſt vel ordinaria vel extraordinaria n. 22 p. 328

Quamvis poſſeſſionis initium ab ipſo domino abrogatur, tamen ad præſcriptionem titulus neceſſarius non eſt n. 23. p. 328

In præſcriptione ſervitutum quomodo tempus computandum? n. 20. p. 362. coheredum ſervitutum præſcriptio n. 25 p. 362

Præſcriptio adverſus unum coheredem facta, non nocet aliis coheredibus n. 21. p. 185

Præſcriptio non currit ei, qui rem communem ut communem poſſidet n. 50 p. 188

Præſcriptioni pacto renunciari poteſt n. 157 p. 715

Præſcriptio ... præcipuè in favorem debitoris introducta eſt n. 157 p. 715.

Præſcriptionis computatio in annuis præſtationibus n. 5 p. 1137 & 38

Tantum præſcribitur, quantum poſſidetur n. 21 p. 1338

Præſcriptio in odium negligentiæ introducta n. 35 p. 1341 n. 33 p. 1439

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Non valenti agere, non currit præſcriptio n. 50 p. 1342

Præſcriptio tempore belli, cum eſt juſtitium, dormit num. 50 p. 1342 n. 38 p. 1440

Præſcriptio tamen naturalem obligationem tollit n. 36 p. 1440

Tit. De præſcriptis verbis i. p. 870

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Præſcriptio & uſucapio differentiæ, n. 1. 2. 3 p. 1337

Præſcriptio ipſo jure tollit actionem, n. 51 p. 336.

Præſcriptio & uſucapio bonam fidem requirunt n. 3 p. 1337.

Præſcriptio interrumpitur per citationem n. 2 p. 104 non vero ſemper n. 60 in [*] p. 108

Interrumpitur quoque per proteſtationem publicè propoſitam n. 60 p. 108

Ob ſolam ignorantiam contra præſcriptionem non datur reſtitutio i. p. 234.

*Præſentia.*

Præſentia fortuita non ſufficit, ubi ſtatum aliquod expectandum n. 40 p. 107.

Pro præſente habetur, qui in eadem provincia habet domicilium n. 19 p. 301. vel qui per procuratorem quemlibet, aut ... agit n. 7 p. 1300

*Præſes.*

Præſides erant Magiſtratus provinciales i. p. 30. 31. habebant criminalem jurisdictionem, non tamen poterant deportare ibid. dona, non vero exenia accipere prohibebantur ibid.

Præſes Ægypti i. p. 30.

*Præſtationes perſonales.*

Veniunt in petitione hereditatis i. p. 298 familiæ herciſcundæ & de communi dividundo judicio n. 27 in [*] p. 391 in additionem in deum n. 22 p. 728

Comprehendunt debita exacta, pretia rerum venditarum i. p. 298

Præſtationum perſonalium fundamentum n. 4. 5. p. 306 n. 4 p. 384.

*Præſumtio.*

Tit. De probationibus & præſumtionibus i. p. 939

Præſumtio naturalis libertatis, relevat ab onere probandi n. 16 p. 63

Præſumtionibus & conjecturis datur locus, ſi non appareat quid inter partes actum n. 28 p. 681

Præſumtio contrarii probatione enervatur n. 59 p. 148

Quilibet fundus præſumitur liber n. 8 p. 357. ſi autem pareat, non principio, hujus tamen tempore quilibet fundus ſubjectus præſumitur ibid.

Omnis præſumtio debet eſſe deducta ex re certa n. 3 in [*] p. 217. n. 60 p. 949. n. 55 p. 1512.

Præſumtio doli eſt odioſa n. 95 p. 548.

Præſumtio debet fieri in partem favorabiliorem n. 31 p. 245

Illa præſumtio prævalet, quæ actum reddit validiorem n. 50 p. 730

Parens præſumuntur verus & perfectus amor i. p. 44 & n. 30 p. 53. ex juſto matrimonio natus, legitimus præſumitur, niſi hanc præſumtionem idonea argumenta eliderent n. 4 in [*] p. 56. parens imperfectus, liberos à præſumtione amoris penitus excludit n. 7 ibid.

Præſumtio capiendæ hereditatis, quando gravet valeat? n. 10 p. 57

Præſumtio ſortitur ex iis rebus, quæ ut plurimum ut eveniunt n. 55 p. 393

Præſumtio cedit veritati n. 2. 8 p. 469 n. 8 p. 1070

De homine viro præſumendum non eſt, quod rem alienam ſine cauſa retinere velit n. 5 p. 497 n. 4 p. 506

Præſumtio eſt quemlibet ſcire vires patrimonii ſui, pro laſo tamen et de damno vitando certante, ſtat præſumtio ignorantiæ i. p. 767.

Præſumtio eſt probatio per argumenta probabilia facta i. p. 941.

-- onus probandi in adverſarium transfert i. p. 940.

Qui præſumtionem juris pro ſe habet, non tenetur probare n. 12 p. 943 Hujus præſumtionis exempla n. 54 p. 949.

-- eſt vel juris tantum, vel juris & de jure, vel hominis i. p. 941. n. 48. p. 948 n. 55 p. 949.

-- juris & de jure non admittit probationem in contrarium i. p. 941.

-- juris & de jure ſemper vera eſt, niſi aliud confiteatur, vel factum ſit contrarium i. p. 941. n. 47 p. 948.

Aliæ præſumtiones tamdiu veræ ſunt, donec probetur contrarium i. p. 942.

Nulla præſumtio eſt ſine præcedente facto n. 46. p. 947. n. 56. p. 949.

A præſumtione differt ſuſpicio, fictio & veriſimilitudo num. 55. p. 949. n. 60. p. 949.

Præſumtio eſt non permanſiſſe in ſtatu naturali n. 58 p. 949.

-- pro matrimonio ex traductione conjugali naſcitur n. 7. p. 1038.

*Pr*

Praeſumtionem quaenam ad condemnandum reum ſufficiant? n. 9. p. 1571. n. 14. p. 1593.

*Praeteritum.*

Teſtamentum ipſo jure nullum fuit n. 1 p. 1237.

*Praeterium.*

In praeterium non venitur n. 30 p. 160.

*Praetor*

Praetorem ad temperandum aequum jure civilis per interpretationem n. 6 p. 18 n. 6 p. 218 quod eſt ſpecies juris civilis *ibid.* p. 28.

Veteres omnem Magiſtratum praetorem dixere. *c. p.* 79 ... verbis praetorum, dictum, edicere *ibid.*

Praetorum edicta collegit Salvius Julianus *c. p.* 20

Edictum perpetuum *ibid.* n. 95 in [*] p. 97.

Praetor erat vel urbanus, vel peregrinus, deinde provincialis *c. p.* 79

Praetores ſi deinceps ... plebis vel populi *ibid.* ... vigiliarum dicti *c. p.* 80.

Praetor in cauſis arduis ipſe judicibus & prudentem poſtea ... debet n. 43 p. 91

Praetor ſua ... ut ex lege ... hypotheca ... conſequatur n. 9 p. 517 ... edicto ... agenti ... n. 9 p. 517.

Album Praetoris vel. *Album.*

Praetor à judice hodie non diſtinguitur n. 3 p. 1465.

*Praetorium.*

Praetoria ... in urbe ... n. 12. p. 349.

*Praevaricatio.*

Praevaricatio *c. p.* 166. n. 8. p. 1568. 1619. propriè in publicis cauſis dicitur n. 13 p. 170 n. 1 p. 1560.

Praevaricatio in propria cauſa non committitur n. 2 p. 1561.

Aliud eſt praevaricari, aliud tergiverſari. n. 3 p. 1561.

Tit. De praevaricatione *c. p.* 1560.

*Praeventio.*

Praeventio locum habet, ubi delictum in ... commiſſum eſt n. 123 p. 275

Ubi plures ... ibi occupanti ... potior eſt n. 54 p. 180.

Pragmatica ... n. 5 p. 36.

*Pr*

*Precarium.*

Tit. De precario *c. p.* 1412.

Precarium quandoc revocari poteſt n. 22. p. 354. n. 2 p. 541 n. 1 p. 1412.

Revocatio tamen non debet in tempore ... fieri n. 20 p. 1415.

In precario praeſtatur culpa lata n. 14. p. 542. n. 18 p. 1414.

Precario poſſeſſor, ab ... n. 11 p. 1414.

Contra ... poſſeſſorem, ... interdicto ... poſſidens n. 12. 16. 19. p. 1414.

Nemo rem ſuam precario poſſidere poteſt. n. 9 p. 1414.

Precarium ... contractibus annumeratur n. 2 p. 1413.

In precario non datur actio civilis n. 13. 14. p. 1414.

Precarium quomodo ... n. 23. 24. 25. p. 14 5

Jus precarium *c. p.* 318 n. 22 p. 1415

Jus primariarum precum n. 21 p. 357.

*Pretium.*

Pretium in ſingularibus non ſuccedit in locum rei n. 32. p. 75 n. 18. p. 301

Aliud in pretio ex rebus hereditariis ... n. 18 p. 301 vel ſi res ... vendita fuerit n. 33 p. 735.

Pretium ſi ad quantitatem ... non deberet ... pro ... *c. p.* 648.

Si pretium in duos aequè individuos ſuerit ſacturum, ... in uno non ſtat contractus. *c. p.* 653

Pretium conſiſtere in pecunia non ... *c. p.* 691.

-- in pecunia numerata quomodo conſiſtere dicatur? n. 81 p. 707 n. 101 p. 700

In venditione, ... pretii ... ſerendum? n. 104. p. 814.

Pretium in emtione venditione debet eſſe verum. non ... *c. p.* 691 aequivalens rei n. 185 p. 719

Pretium juſto ... *c. p.* 691

Pretium debet eſſe certum. Augmentum tamen ... eſſe poteſt n. 99 p. 709

-- à Magiſtratu poteſt eſſe determinatum *c. p.* 691.

Pretio ... n. 104. p. 710.

*Pr*

Pretium ... per ... poteſt eſſe certum *ibid.*

-- eſt de eſſentia ... n. 179. p. 719

-- non debet eſſe in arbitrio unius contrahentium *c. p.* 692. n. 92. p. 708. n. 93. p. 709. ... arbitrio ... *ibid.* n. 88 p. 708. n. 94 p. 709 ... *ibid.*

-- juſtum eſſe cenſetur quod à ... eſt definitum *c. p.* 692.

-- ... contractum non reddit nullum ipſo jure n. 100. p. 709

Propterea pretii definitio difficilis eſt *c. p.* 692

Pretium non ubique locorum idem n. 116 p. 711. n. 20. p. 776. in determinando pretio, circumſtantiae loci & temporis benè conſiderandae n 18 p. 777.

Pretium ... n. 21 p. 929

Omnes ... pretio legitimo, laeſo eſt *c. p.* 692. n. 103 p. 709.

In pretio arbitrario nemo ... n. 103. p. 709.

Pretium vulgare vel naturale *c. p.* 693. ... vel formale, conventionale, vulgare vel commune n. 101 p. 709.

-- legale vel arbitrarium n. 103 p. 709.

-- ... haben ... mittel und höchſten Anſchlag *c. p.* 693 ... *ibid.*

Pretii determinatio unde ... n. 105. p. 709.

Pretium ... n. 22 p. 776.

-- ... demonſtratur, ... n. 90. p. 708. & in [*]

Pretio ... n. 141 p. 714. n. 148. *ibid.*

De pretio ſi ... habeatur, ... n. 20. p. 734.

Pretium ... à die ... *c. p.* 802.

Pretio ... n. 30. p. 735.

Pretio ... n. 15 p. 175.

Pretium ... n. 200.

-- ... *c. p.* 801 ... n. 102. p. 814

Pretii ... *c. p.* 800

Pr

*p.* 800. niſi mora haberi juſtam cenſeri *c. p.* 801.

*Princeps*

Princeps excludi neceſſitatem nomen imperare poteſt *n.* 4. *p.* 3. an occidendorum publicae defens domanium, ex nimium dictum poſſit promoveri? *n.* 30 *p.* 121. Subditos diſpenſationes de rebus divinis prohibere poteſt *c. p.* 25

De iis, quae ſunt juris divini, nihil diſponit *n.* 30 *p.* 12. *n.* 23. *p.* 13.

Princeps omnes liberos ſuos eſt *n.* 55. *p.* 92.

Princeps legibus eſt ſolutus *n.* 10 *p.* 29. ſi ſit minor poteſt reſtitui in integrum *n.* 73 *p.* 231. In contractibus utitur jure privatorum *n.* 21 *p.* 39. *n.* 22. *p.* 476. *n.* 18 *p.* 593 *n.* 6. *p.* 1672. non tamen eſt ad ſtrictum ad ſolutum *n.* 10 *p.* 29.

Princeps, quae ſunt juris civilis, tollere poteſt *n.* 15 *p.* 58 *n.* 9 *p.* 61. *n.* 22. *p.* 143 *n.* 13 *p.* 1045. Conſentire ut parte, libera atque ad ingenuam praejudicare poteſt *n.* 19 *p.* 50.

Ad leges omnino obſtrictus non eſt, & veniam aetatis ante 20 annum dare poteſt *n.* 7 *p.* 226.

Princeps in propria cauſa jus dicere poteſt *n.* 64. *p.* 248 & quae ipſe facere ſolebat, ſi per reſpectum expeditum ſuſi ... *n.* 3 in [*] *p.* 62.

Princeps ſervare conditionis, *c. p.* 108. an contra ſuae ſervare ... ſervire poteſt? *n.* 10 *p.* 121.

Princeps contra Anſtruque contraventionis *n.* 31 *p.* 105. niſi ſumptibus aliunde contraveniatur *n.* 6 *p.* 309.

Princeps poteſt crear ... in ſolidum ſervare, & reſtitutum non ſolvere ... *n.* 22 *p.* 105.

Princeps de ... gravaminibus cognoſcit *n.* 156 *p.* 180.

Princeps in ſuo territorio jure ſuperiorum ... aliorum ... dominium, an aliquo jure ſervitutis *n.* 3. *p.* 349.

Princeps ſolum dicitur cujus ſervitus *n.* 43 *p.* 290.

Principes imperii ... ſunt ſoluti, & quod ... propter leges ſibi ipſis condere poſſunt *n.* 3 *p.* 747

Princeps ... inſtitui non debet *n.* 20. *p.* 1146.

Pr

Principibus ſeculi ad ... ... novum opus ... *n.* 21 *p.* 1276.

Princeps, qua ... ſemper ... eſt Conſiliarius, omnes accurate deliberaſſe praeſumuntur *n.* 20 *p.* 1294.

Princeps bona ... ſoll einem Fürſten ſtehen, den einer Straße ... Mange und Haltens ... Zuſatz *c. p.* 1369.

Princeps jus ex contractu quaeſitum, tollere nequit *n.* 33 *p.* 1500.

Principes ... non vel ... bene ... dicere ſolent *n.* 75. *p.* 610.

*Principium vel, Initium.*

Principium ... *n.* 18. *p.* ... principium neque ſunt ... ... ipſo principio *n.* 24 *p.* 13.

*Privare.*

Juris privare non facile ..., ſed ... vel ad ... *n.* 27. *p.* 106.

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*Privigmus.*

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*Prodigus.*

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Requiritur Titulus ad transferendum dominium habilis, item bona fides *t p.* 313 non impeditur per malam fidem ſupervenientem *ibid.* omnia requiſita uſucapionis, excepto tempore, hic adeſſe debent *n* 2 *p.* 313.

Publiciana imitatur rei vindicationem *n.* 2. *p* 314. aliquando contra verum dominum competit *n* 3 *p* 314.

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Cui datum alio jure, maior longa datum re retentum n. 95 p. 297.
Retentio non facit, ut res perpetuo noſtra ſit, ſed ut ſaltem ad tempus detineatur n. 84. 85 p. 645.
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*Reverſio.*

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Retrovenditio ita tendit, ut tantum contra venditori pretium reſtitutum transferatur c. p. 696.
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Retrovenditionis pactum ordinariè in conditione eſt pacto pignoratitio n. 55. p. 961.
Retrovenditio quomodo ſit ſubmodum ſacienda? n. 160. p. 716
Ex retrovenditionis pacto, naſcitur actio perſonalis n. 156. 162 p. 716.
In retrovenditione, ſi aliud expreſſum non ſit, aliud ſolvendum eſt pretium, quod in prima ſuit venditione n. 163 p. 716.
In retrovenditione, res in eodem ſtatu eſt reſtituenda, ſic reſpiciendum ob der Käuffer die Aecker beſſer bebauet habe n. 164. 165. p. 716.
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Reus eſt cum quo agitur c. p. 254. In ſua domo ubi non venire domicilio debet c. p. 256. Non habent in re, ſed in corpore c. p. 87.
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Reum vadimonium deferens, vel ad personam, vel ad incerta tenetur c. p. 117.

Reus recipiendo ſit actor n. 69. p. 133.

Reus regulariter non inſtrumenta, nec rationes edere compellitur c. p. 126. Ad fundandam tamen actoris replicam edere tenetur c. p. 126. n. 69. p. 132. n. 69. 70 p. 133.

Reo in dubio jure magis favere ſolemus, quam actori n. 64. p. 132 n. 195 p. 467 n. 50. p. 777.

Reus ſuper crimine capitali confeſſus non habetur pro confitente n. 35. in [*] p. 151. n. 37 in [*] p. 162. aliud ſi de delictis ſit non capitale vel, transactio.

Reo in criminali cauſa etiam latam contestationem, non conceditur Advocatus neque Procurator, niſi levia ſint indicia n. 64 p. 190.

Reus contumax Procuratore in criminalibus non eſt admittendus n. 64. p. 190.

Rei eſt fugere n. 55. p. 267 in dubio, pro reo pronunciandum *ibid.*

Reus ſuo facto vel actoris interveniente nequit n. 16. p. 309.

Reus expenſas prius ſine magniſicentiâ reſtituere tenetur n. 93 in [*] p. 456.

Quid vero dicendum, ſi generale abſolvitur? n. 37 p. 514.

Ubi pœna capitalis in ſugitur, Reo Magiſtratus ſumptum præſtare debet n. 37 p. 514

Reus nihil probare tenetur, ſed ſufficit illum dicere, poſſideo quia poſſideo n. 44. p. 947 Si actor aliquid ſibi pro habuerit, reus præſtat juramentum purgatorium n. 45. p. 947

Reus alternativè conventus electionem habet, utrum præſtare velit c. p. 770 in f.

Reus non poteſt excipere quando vult, ſed debet expectare, donec conveniatur n. 115. p. 784.

Reus in obligatione ſolidi, præſtitione depoſiti liberatur n. 119. p. 785.

Reus pro debitorum ſummam, etiam ſi ſint 30 annos numerata producere poteſt c. p. 961.

Reus contra uxorem in diverſa cauſa teſtis eſſe poteſt n. 36. p. 967.

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Reus judicio publico damnatus, ſit infamis c. p. 1572.

*Tit.* De duobus reis conſtituendis c. p. 1468.

L. conteſtari tantum vel *Remiſſio*, ſive mortuo, pœna nihil omittitur n. 21. 23. p. 1577 quod fallit in crimine læſæ Majeſtatis c. p. 1582.

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Separatio est vel vera, vel quasi talis *ibid.* 1376.


Sepa-

*Se*

Separatio creditorum aliquando necessaria n. 2 p. 1567 n. 11 p. 1567.
Separationis beneficium non competit heredi, nec eius creditoribus, ad rubr p. 1575.
Beneficium ſeparationis, quomodo creditor petitum amittat? n. 15 p. 1489.

*Sepulchrum.*

*Tit.* De ſepulchro violato t. p. 1554 poena violati ſepulchri quando locum habeat? t. p. 411
Sepulchra vel ſunt familiaria, vel hereditaria, vel mixta n. 1 p. 411 n. 31 p. 416
Sepulchrum aedificaturus, id facere debet adhibito conſenſu Patroni aut Condictori n. 4 p. 418

*Sepultura.*

Duas ſepulturas nemo habere poteſt n. 14 in [*] p. 73
Sepultura ab defuncto in alterum inhibere nequit n. 14 in [**] p. 73
Ecce ſepultura nihil ſtandum, niſi debeat eſſe hereditaria, aut quis in templo ſepeliri velit t. p. 411 n. 3 p. 423 n. 10 p. 413 ubi tamen jus ſepeliendi permittit quanto ipſe locus vendi conſetur n. 56 p. 705
Sepultura favorabilis t. p. 411
Sepultura dividitur in honeſtam, & inhoneſtam t. p. 411 & hanc in inhoneſtam in ſpecie ſic dictam & Aſininam *ibid.* denegatio honeſtae ſepulturae eſt una poenarum parum *ibid.* honeſta ſepultura indigne cenſetur haeretici, uſurarii manifeſti &c. t. p. 411 n. 16 p. 414.
Ab honeſta ſepultura in dubio nemo excludendus n. 19 p. 415.
Sepultura inhoneſta non habet locum niſi in caſibus à lege notatis n. 19 p. 415 n. 2 p. 1651
Sepulturae locus inhoneſtus eſt ad commune coemeterium, quo propter vetus Eccleſiae, tanto honoratur n. 21 p. 415.
Sepultura in Croatiae alias ſ cubilica, conſuetudine introducta n. 7 p. 1556
Mortui ex lege ſecularitas ſepeliendi ſunt n. 1 p. 1651.

*Sequeſtrum.*

Ubi periculum diſſipationis eſt, ibi locus eſt ſequeſtro n. 24 p. 115
Sequeſtrum t. p. 653
Sequeſtrum ſit in re controverſa n. 10 p. 654
Quod tamen non ſingulorum depoſitum eſt ſequeſtrum n. 95 p. 662

*Se*

Eſt juris gentium n. 92 p. 661
Sequeſtrum regulariter eſt prohibitum, quia ſpeciem continent spoliatio n. 94 p. 661
A recipiente ſequeſtrum detentorem ſeu maior cuſtodire debet de jure ſequeſtrum petitum *ibid.*
Sequeſter quando poſſidens? n. 96. 97 p. 661.
In ſequeſtro proprie eſt depoſitum n. 96 p. 661.
Sequeſtrum non eſt gratuitum, ſed ſequeſtro ordinarie tantum aliquod ſalarium praeſtatur n. 98 p. 662
Ubi periculum diſſipationis, ibi locus eſt ſequeſtro n. 24. p. 115.

*Serenum.*

Serenum rationis privationem eſt contra aequitatem t. p. 690

*Servitutes.*

Servitus aliud vel quid t. p. 376 & 77

*Servus quid etiam Famulus.*

*Tit.* De opera ſervorum t. p. 336.
*Tit.* De ſervo corrupto t. p. 400.
Qui ſervum quod animum corrumpit, tenetur actione de ſervo corrupto, qui ad corpus, tenetur ex L. Aquilia t. p. 400 n. 3. p. 401 in [*]
Servum alterius deteriorem reddere, eſt delictum contra decalogum n. 4 p. 401
*Tit.* De ſervo exportando, vel ſi ita mancipium venierit, ut manumittatur vel contra t. p. 792.
Servi à ſeminae hominum non exclusi ſunt n. 6 p. 45.
Servi aſcriptitii, referuntur ad res immobiles t. p. 69 à ſervis argumentamur ad homines proprios vid. *homines proprii* n. 14. p. 48 conductitii ſunt plane liberi *ibid.* qua jura in locatione conductione obtinent, eadem inter dominum & ſervum locum habent n. 24. p. 48. in [***]
Servo ante tempus ſine ſervitii mortuo, mercas pro rata ſalarii debetur *ibid.*
Servus malus notificatus malum, nec ultra corpus ſuum domino nocere eſſe debet n. 22. p. 250 n. 4. p. 376. num. 3. p. 1520
Servi apud Romanos proximiſſimi cunquam patiebant n. 1. p. 1164.
In criminalibus pro vero non ſiſte perſona habetur n. 57 p. 267.

*Se*

Ob delictum publicum ipſi tenetur n. p. 375.
Ex contractu ſervi, datur actio de peculio t. p. 375.
Servus nocte datus, ſi ipſum lucre poteſt t. p. 376.
Servus ex contractu non obligatur t. p. 376
Servi dicebantur eſſe in contubernio, non matrimonio n. 47 p. 998.

*Servitus.*

Servitus introducta, jure gentium t. p. 43 inter Chriſtianos in detentionem aliquid *ibid.* pactio tamen non repugnat ab eſt vel publica, vel legalis n. 1. p. 46. n. 9. p. 46. inter Chriſtianos eſt abrogata n. 10. p. 46 contra Turcas jure autumnum adhuc durat n. 11 p. 46.
Servitia feudalia, niſi canſa non debentur n. 5. p. 336.
*Tit.* De ſervitutibus praediorum urbanorum t. p. 384.
*Tit.* De ſervitutibus praediorum ruſticorum t. p. 352.
*Tit.* Communia praediorum, tam urbanorum quam ruſtic. t. p. 355.
*Tit.* Si ſervitus vindicetur, vel ad alium pertinere negetur t. p. 355.
*Tit.* Quemadmodum ſervitutes amittantur t. p. 360.
Conſtituuntur vel à lege vel ab homine t. p. 342.
Ubi ſervitus à ratione invito imponitur, tunc ſemel aſſumentum adjudicari illi, cui impoſita eſt n. 11. p. 345.
Servitutis ab unde ſalteem dominum habentibus conſtitutae, ſubſiſtunt in illorum praediorum, quoad ſi illorum jus durat t. p. 342. n. 14. 15. 16. p. 346
Conſtituuntur domini conſtituentis voluntate expreſſa, vel praeſumpta t. e. longi temporis praeſcriptione t. p. 343.
Ex eorum ſervitus conſtituuntur, quae dominium n. 21 p. 345.
Per conceſſionem promiſcuitatem, per traditionem & patientiam conſtituuntur n. 37. p. 345
In diſcontinuis praeſcriptio temporis immemorialis requiritur t. p. 343 n. 30. p. 347. diſcontinuum ſive ruſtica n. 9. p. 345
In praeſcriptione ſervitutum quaſi poſſeſſio, titulus & b. f. non verò ſcientia domini requiritur t. p. 343 n. 24 p. 346 in [*] n. 32. p. 347.

Se


Acquiſitio ſervitutis favorabilior eſt, quam impoſitio n. 17 p. 346.

Ut conſtituatur ſervitus, duo prædia requiruntur c. p. 343. eaque vicina ... [illegible] ibid. & perpetuam ſervitutis cauſam habeant, ibid. eamſem ... quæ habeant n. 8 p. 344. in [*] occaſione vicinitatis [illegible] ſervitutem n. 1. p. 344.

Nil refert, utrum exercitium ſervitutis aliquando ſuſpendatur c. p. 343. ... retinetur n. 29 p. 347 ... ſemel corpus [illegible] n. 29 p. 347

Nemo in re communi pro ſua parte ſervitutem poteſt conſtituere n. 12 p. 345 pluribus tamen per eundem locum conſtitui po eſt c p. 353. modo illius, cui prius conceſſa fuit ſervitus, commodum non fiat deterius n. 2. p. 355.

Servitus quid & unde ... quid? c p. 324.

Servitutes in perſonas hæredicas ... rerum hæreditariarum non ſunt ... n 30. p. 302.

Servitutes vendicari poſſunt num. 3 p. 308. ... actione confeſſoria & negatoria n. 29. p. 310. n 48. p. 329. in [*] c. p. 355. [illegible] c. p. 326. ... prædium poſſideat, non tenetur eius dominium probare c p. 356

Servitutum eſt quaſi poſſeſſio num. 43. p. 329 in [*]

Servitutes reales prædiis inhærent, & unaquam qualitas prædiorum ad quemcumque poſſeſſorem transferunt c. p. 343. n. 2. p. 344.

Servitus eſt res incorporalis c. p. 69. ... ſubſtantiam fundi penitus inhæret c p 343. nec dividi poteſt n. 10. p 357. n. 20 p. 385

Servitutem prædio ... quidem ... [illegible] imponere poteſt c p 342.

Servitutis impoſitio eſt ſpecies alienationis n. 13. p. 346.

Servitute prædio dominanti acquiri poteſt per procuratorem, procuratorem &c. c. p. 342.

Servitutes ſunt vel perſonales, vel reales c. p. 324. urbanæ vel ruſticæ c. p. 342. affirmativæ vel negativæ, continuæ vel diſcontinuæ c p. 342.

Nulla ſervitus urbana ſine publico præſidi poteſt n. 20. p. 328. ... ſervitutes quaſi poſſideri & uſucapi poſſunt ib.

Servitutes ſervitutum ſunt accidentales n. 1. p. 344

Nulla ſervitus conſiſtit in faciendo n. 2. p. 326. ſed in patiendo & non faciendo ibid. in [*] c. p. 343. n. 47 p. 347.

Dominus tamen omnia facit, ſine quibus non eſt ſervitutis uſus c. p. 343. n. 5. p. 349.

Servitutes urbanæ præcipuæ ... c. p. 348.

Servitus nomen accipit à prædio dominante, quale igitur hoc eſt, talis etiam ſervitus denominatur n. 3. p. 326. n. 4. p. 344. n. 12 p. 349.

Una eademque ſpecie ſervitus modo eſt realis, modo perſonalis, ruſtica vel urbana n. 1 p 344

Omnis ſervitus ſevera eſt realis n. 3. p. 327

Effectus diſtinctionis inter reales & perſonales ſervitutes n 1. p. 344. in [*] urbanas & ruſticas n 5 p 344. in [*] affirmativas & negativas n. 7 p. 344.

Servitus talis acquirendo, ... ſubdenda &c. ... n. 3 p. 349 n. 7 p. 327

Servitus ... n. 10. p. 345.

Omnes ſervitutes ... ſunt ſine ... c. p. 342. debent habere cauſam perpetuam n. 10 p. 345. cauſa perpetua quæ dicatur ibid. n. 10.

Servitutes ... perpetuum ... n. 21. p 354.

Qui habet ius ... per quamlibet fundi partem ire poteſt, moderate tamen hoc iure uti debet ... heres ... c. p. 343. n. 40. 41 42. p 347

Servitutem ... ſecundi qui debet patientiam vel ... c p 348

Dominus ſervientis, ... vel modum conventum, ... debet c. p. 343 n. 49. p. 347 nec poteſt ... niſi hoc ſuerit conceſſum c. ibid.

Servitus ... n. 35 p. 837

Servitutum prædialium ... ut ſequitur ... n. 3. p. 349.

Servitus ... per partes acquiri nequit n. 19. p. 346

Servitus ... ruſtici dicatur ſervitus? n. 23 p. 349.

Servitus ... non ... n. 26. p. 350.

Servitus proſpectus, & ne proſpectui officiatur, luminum, & ne luminibus officiatur n. 17 20 23. 24. p 351.

Servitutum ruſticarum definitio illarumque ſpecies c. p. 352. 53 ... à pluribus, vel ab uno c p 352.

Servitute ſemel conceſſa, ... n. 48 p 347.

Poteſt quis per alium ſervitute uti c. p. 360

Servitutes vendito fundo ... in novum poſſeſſorem transferuntur p 798

Servitus ſit realis, an verò perſonalis diſcer n. 31. p 807.

Servitus ſtricte interpretanda, non ... vel aggravanda n. 14. p. 354. ... n. 11 p 361.

Servitus, ſervitutem imponere non debet n. 15 p 354. ... niſi quis dominus prædio dominante ... commodum non ſentit n. 20. p. 354.

Servitus ... n. 28 p. 354.

Servitutes ... ipſo iure c. p 360.

Servitus per confuſionem extincta non reviviſcit ... n. 6 p 362.

Servitus, ... hereditate reviviſcit n. 27 p. 750.

Servitus ... n. 1. p 897.

Servitutes ſervitus non ... n. 2. p. 1425

Servitus ruſtica, urbano prædio aſſignata deſinit eſſe ruſtica n 4 p 1407.

Servitus non tollit ... n. 37. p. 1006.

Servitus ... n. 11. p. 1227.

Tit De ſervitute legata c. p. 1190.

Sigillum, Signum.

In Mandato c p. 181.

Sigillum ... poteſt n. 64 p 596. Verum magis quam ſigillum ... ibid.

Sigilli ſeu ſigni impoſitio rebus ... facta quid operetur n. 52. p 905

Signum eſt ... c. p. 787. non ſemper n. 46. p. 792

Sigillum ... nullam vim habet c. p. 970


S gilu

*Si*

Sigilla pub'ica à perſonis privatis cuſtodiri ſolent n. 6 p. 918

Sigillum Notarii, ſi inſtrumento non fuerit appoſitum, requiritur juramentum ſuppletorium n. 22 p. 346.

*Signatura.*

Cùm Signatur quid ſit in Saxonia? n. 3 p. 35

*Silentium.*

In poſſeſſionem perpetui ſilentii commiſſum p' aecedit n. 52 p. 108

*Simonia.*

Simoniam non committunt qui prebendas, ſalario pro relegatione homicido acquirunt n. 6 p. 1618

*Simulatio, ſimulatum.*

Non præſumitur n. 12 p. 159 [*]

In contractu ſubiiſſe, ut quandam veritas ſubeſt n. 12 p. 159 n. 201 p. 720

Simulatio eſt vel abſoluta, vel reſpectiva ea la n. 198 p. 720

Quod ſimulate geritur, regulariter habetur pro non facto s. p. 698

Simulatio in emptione venditione s. p. 698.

Simulata cautio ab omnibus contrahi nequit n. 85 p. 708

Simulata venditio ut in vim donationis ſubſiſtat ſi 500 ſolidos excedit extra inſinuationem non ſubſiſtit n. 87 p. 708

Simulationis exceptio, etiam inſtrumentis guarentigiat opponitur s. p. 698

Modo in contractu probari poſſit n. 200 p. 720

Simulatio allegata, ab allegante probanda eſt, etiam per confeſſionem s. p. 698. vel juramentum n. 36 p. 729

Vitium ſimulationis, nullis renunciationibus ſanatur n. 199 p. 720

*Simultaneum.*

Simultanea inveſtitura actu nihil dat, bene a cautione nō ſunt liberi n. 22 p. 115

In Saxonia ubi conveniamus? num. 164 p. 280.

*Societas.*

Societas quid s. p. 673

Societas poſſit re contrahi n. 29 p. 321.

Eſt mater diſcordiarum n. 2 p. 384

Societas ad certum tempus, non vero in perpetuum contrahi poteſt n. 24 p. 391 quid ſi juramentum de continuando interceſſerit? ibid.

Societas per ſtrumentum habet n. 60 p. 672. n. 49 p. 683

*So*

Societas eſt vel univerſalis, vel particularis s. p. 674

In dubio ſocietas bonorum potius, quam omnium bonorum contracta cenſetur s. p. 674 n. 8 p. 679

Societas omnium bonorum re contracta cenſetur, ubi reqiſita eſſe debent n. 15 p. 680

In ſocietate vel ipſam domus una vel ſingulæ tantum communicantur n. 28 p. 681

In ſocietate omnium bonorum quæ in ſocietatem communia ſunt n. 88 p. 686.

Societas conſenſu vel facto initur s. p. 674 n. 14 p. 680

Societas cum ſuperſeſſo quam ſolus inire poteſt n. 1 p. 678

Societatem contrahere poſſunt omnes, qui ſe obligare valent s. p. 674

Qui poſſit neque, nec ſocietatem inire poſſunt n. 20 p. 681

In ſocietate omnium bonorum communicantur res in ſocietate præſentes, & ſuper ... ſine ve ... ſ. p. 676

Lucrum & damnum æqualiter dividitur licet res inæqualiter ſint illatæ s. p. 675

Quomodo res communicentur, ut eo ... quod alter partem aliam ſocio s. p. 675.

Societas pro parte donationis cauſa valide contrahitur s. p. 675 n. 33 p. 682

Societas ad dies vitæ contrahi poteſt, s. p. 675 etiam ad tempus vel ex tempore ibid.

Socii ... renunciare licet n. 62. p. 684. modo non ſit doloſa renunciatio n. 66. p. 68

Societas ſolvitur variis modis s. p. 676 n. 59. 60. 61 62 p. 684.

Non vero morte capitis dividatione ibid.

Nemo invitus in ſocietate tenendus n. 62 p. 684

Si ... ad dies vitam non durat licet ad certum tempus contracta ſit ibid.

Societas in æternum non contrahitur n. 37 p. 682.

Nec juramento perpetuatur n. 55 p. 684.

Societas juramento confirmata, utrumque ad continuandam ſocietatem obligat, donec licita cauſa ... renuntiet n. 55 p. 684

Societas ab inæqualitate lucri non ſubſiſtit n. 1 p. 678

*So*

Inæqualitas lucri ſuſtinetur n. 32 p. 682.

Societas leonina n. 33 p. 682

Rerum ... unde eſt ſocietas n. 4 p. 678

Re in ſocietate non ſuccedit in locum primum n. 11 12 p. 680

Nemo ſocietatem contrahendo ... dominum eſſe deſinit n. 21 p. 859

*Socius.*

Socii hæres ſocius quidem non eſt, emolumenti tamen ſucceſſor eſt n. 13 p. 18

*Ter.* Pro ſ... s. p. 673

Non invitus tenetur in ſocietate manere n. 2 p. 384 n. 81 p. 841. Suam partem prohibere alienare poteſt n. 18. p. 700.

Socius ... officiis præſertim communi in re communi s. p. 389.

Socii dicuntur qui communi periculo & commodo obligationem contrahunt n. 18 p. 1472

Socium in re communi invito ſocio nihil facere poteſt n. 17 p. 390.

Socius non poteſt prædio communi ſervitutem pro parte domini acquirere vel imponere n. 71 p. 706.

Socius intra quatuor menſes impenſas in rem communem factas cum uſuris contiſtim reſtituere derelictam, ſuam partem amittit n. 16 p. 390.

Socii nominatio vel. *Interdum*. ... ibid.

Qui mittit diſpenſem ſocium elegit, habet quod ſibi imputet n. 94 p. 548 n. 41 p. 683

Socius ſi in ... ad merces comparandas in latrones incidit, tunc alter ſocius partem damni agnoſcere tenetur, ... , quia negotiationis ad ſocietatem pertinentis gratia ſeſe talis ſuſtinuit n. 59 p. 672

Socius omnium bonorum, theſaurum à ſocio inventum communicare debet s. p. 674 item ad ducendam ſibi ... ſumptus ſociorum ſuo ſocio ... obligatur s. p. 674 n. 8 p. 679

Socius non poteſt omne damnum aut ejus partem abſque ullo ... in ſe recipere s. p. 675.

Donatio tamen ſi juſta cauſa concurrat ſuſtinetur n. 33 p. 682

Socius ſi edimeffare inventarium exhibere, vel jurato res communes deſignare tenetur s. p. 676

Socius quam culpam præſtat? s. p. 676




Coſam

*So*

Cæterum ſocietatem non ſuſtinet num. 46 p. 683.

Socius gaudet beneficio competentiæ c. p. 676.

Socius aliquo cauſa renuncians ſocium quidem à ſe, ſed non ſe à ſocio liberat c. p. 677

Socius an jure prodimiſeos gaudeat, regulariter receptum non eſt n. 167 p. 717

Socius partem rei communis invito ſocio vendere poteſt n. 43 p. 729

Socii unius victoria ſuper re communi, etiam alteri prodeſt n. 6 p. 1566

Si plures ſocii contraxerunt, ſingulis pro rata ſortetenus datur actio c. p. 677 n. 69 70. p. 685

Actio Ædilitia vero datur in ſolidum n. 79 p. 685.

Socius proprio nomine contrahens reliquis ſociis non quærit obligationem c. p. 677.

Verſio in ſocietatem præſumenda eſt n. 77 p. 686

Si plures ſocii in una ſtatione promiſcue negotientur c. p. 678

Socius negotiationi propoſitus, & factor, & inſtitor eſt n. 79 p. 686

Si ſocius ſocietatis quidem nomine, ſed non ſecundum ſocietatis legem, de rebus ad ſocietatem non pertinentibus contraxit adverſus ſocios nulla exinde actio competit c. p. 678

Socius mutuarum adſumatoriè agens, quod inde conſequitur alteri ſociorum communicare tenetur n. 6 p. 6·9

Socius ex ſua parte ſocietatem augens, facit quod ex neceſſitate contractus facere tenetur n. 44 p. 683

Si ſocius ex una parte lucretur, ex altera vero culpa ſua damnum faciat, non poteſt damnum cum lucro compenſare n. 44 p. 683

Inter ſocium & negotiorum geſtorem ratio diſparitatis eſt n. 45 p. 683

Socius univerſalis portam ex ſocietate capere poteſt n. 47 p. 683

Socii ſibi invicem æquales ſunt, nec reverentiam alter alteri debet n. 52 p. 684.

Socii an pro correis habendi? n. 68 p. 685

Socius excedens limites ſocietatis, non magis reliquos obligare poteſt, quam mandatarius excedens fines mandati n. 37 p. 696

Niſi ſocii ſibi invicem ſuccedunt in ſolidum agendi cedant, aut propter utilitatem commerciorum ſtatuto vel conſuetudine ita fuerit introductum *ibid.*

Aut niſi contrahens, ut inſtitor contraxerit n. 82 p. 686

Quisque ſociorum id facile præſtandum ad quod ex lege contractus obligatus n. 77 p. 686.

*Sodomia.*

Sodomia 20 annis præſcribitur n. 21 p. 1437 n. 27 p. 438 punitur ultimo ſupplicio c. p. 1589 n. 48 p. 1598

*Solarium.*

Solarium ſuperficiarius ſolvit den Grund-Zinß c. p. 1403 n. 2 p. 1404

Solarium ſi intra triennium non præſtatur jus ſuperficiei non amittitur n. 1 p. 1405

Solarium omnibus creditoribus præfertur n. 14 p. 1406.

*Solemnia.*

Princeps in teſtamento aliisque actibus propriis, adhibere non tenetur n. 10 p. 29. actus privatorum, non adhibitis ſolemnibus, nulli ſunt, ut nec Principi aliquid commodi ex iis accedere poſſit *ibid.*

*Solemnitas.*

Si ſolemnitas in favorem perſonæ requiſita fuerit omiſſa, tunc omiſſio actum vitiat ſi fuerit nocivus, non vitiat ſi fuerit commodus n. 17 p. 226

Solemnitates in matrimonio omittere, contra publicam honeſtatem & ordinationes eccleſiaſticas peccat n. 3 p. 991

Solemnitates teſtamenti contraria conſuetudine mutari poſſunt num. 52 p. 1104.

*Solidus.*

Solidus quid fuerit tempore conſtitutionis, de donatione 500 ſolidos excedente in ſinuanda, certo non conſtat c. p. 1291. n. 12 p. 1294.

Solidus pro ducato accipitur n. 70 p. 1523

*Solutio.*

*Tit.* De ſolutionibus & liberationibus c. p. 1489.

Solutio quid? c. p. 1489.

Ficta ſolutio non tollit obligationem c. p. 1489. n. 13 p. 1499.

Solvere omnes qui res ſuas liberè adminiſtrant c. p. 1490. vel alienant n. 3. p. 1492

Solvens majorem ſummam non poteſt alteri 25 flor. de minore portione creditum obtrudere c. p. 1491.

Unius ſolutio in portionibus reliquos non liberat n. 93 p. 97 n. 4 p. 111. n. 31 p. 511.

Ubi de reparatione damni quæritur, ibi ſolutio unius reliquos liberat n. 39. p. 371.

Solvens quod ex delicto debebatur, non habet regreſſum contra correum n. 32. p. 511

Pro alio validè ſolvi poteſt n. 33 p. 580 c. p. 1492. Non vero pro invito p. 1492.

Partem debiti ad cujus ſolutionem naturaliter eſt obligatus ſolvens, totam ſolvere tenetur n. 49 p. 595.

Aliud pro alio invito creditore non ſolvitur n. 46 p. 641 c. p. 1491. n. 1. p. 1492.

Pecunia in alio nummorum genere ſolvi poteſt, niſi aliud fuerit conventum c. p. 1491.

Soluti debiti, nulla repetitio eſt n. 61 p. 643.

Solutionis tempus ita in arbitrium debitoris translatum ut *ſolvat quando volet*, morte purificatur n. 92 p. 708. c. p. 149.

Solutio fieri debet juſto tempore c. p. 1491. Quid ſi ſolutio ante tempus offeratur? c. p. 1491 n. 31 p. 1495.

Solutio debito loco fieri debet. c. p. 1491

Solutio particularis multa incommoda habet. n. 95 p. 757 c. p. 1491.

Solutionem particularem accipere tenetur creditor ſi diverſæ ſummæ debeantur n. 26 p. 1494.

Solutioni æquipollent bene merita n. 150 p. 762.

Solvendo eſſe dicitur qui ſolidum ſolvere poteſt. ad *rubr.* p. 1375.

Solutio transfert dominium & conditionem uſucapiendi c. p. 1492.

*Tit.* Pro ſoluto (ſic poteſt uſucapi) c. p. 1345

Quod in ſolutum datur, cenſetur venditum ad *rubr.* p. 1345.

Solutionem allegans illam probare tenetur c. p. 1492.

Si is ſolvit, qui ex pluribus cauſis debet, in arbitrio creditoris eſt, cui debito ſolutum imputare velit c. p. 1492.

In ſolutum datio n. 23. p. 1494.


In-

So

Solutio uſurarum quæ ad præteritum pertinentur ſi debitor habeat exceptionem contra contractum ſolutionem n. 49 p. 1496.

*Sordidum.*

Moralis laborant ſordidum vitæ genus ducentem n. 56 p. 179.

*Sors* Das Loß.

Sors in diviſione hæreditatis non impedit reſciſſionem, nec in alio negotio *c. p.* 384.

Sors in delictis non adhibenda, niſi omnes ex æquo mortem meruerint n. 16 p. 1607.

*Sors* Das *Capital.*

Sortem uſuræ ſuperare neceſſe non eſt ſed ſors poteſt eſſe major non contra, ſic pro 5 talera poſſum 150 talerorum ſortem habere n. 105 p. 910.

Sors præſumitur ex ſolutione uſurarum n. 5 p. 926.

Sors integra ſervanda *c. p.* 1491.

Sortis reſignatio n. 33 p. 1495.

Sortem judicium, idem eſt ac accipere, aliud eſt ſorte dirimere n. 86 p. 270.

*Spado.*

Spadones adoptare poſſunt *c. p.* 60.

Spadones nuptias non contrahunt *c. p.* 987

Spaniſche Stiefel n. 54 p. 1630.

*Species.*

Jdis id ſpecies, quod Philoſophis ſubſtantia dicitur n. 44 p. 427

Species Lege data denotat genus ſimiliorum n. 26 p. 918.

Si ſpecies certa tradenda, haberi nequit, tunc tamen valor reſtituendus, quanto minimus mutuo dato, ſi habent pro ſpecie, communiter in præſtatione expendi poſſunt n. 47 p. 427

Debitor ſpeciei quæ interiit liberatur n. 23 p. 484 n. 120. p. 552. n. 3 p. 788 n. 50. p. 869.

Species cum quantitate compenſari nequit n. 72. p. 546. n. 20. p. 637 n. 50. & 55 p. 642

Specificatio *c. p.* 1370. n. 87 p. 1372.

Speculatio quid n. 65 p. 810.

*Spes.*

Spes ſi fuerit emta, tum pretium eſt ſolvendum licet nihil natum vel captum ſit *c. p.* 689 ſi verò captum, longo intervallo pretium excedat, tunc venditor tamen rescindere nequit *c. p.* 689.

Sp

*Spiritualia.*

In ſpiritualibus plenaria & abſoluta libertas conferendi adeſſe debet n. 20. p. 211

Spiritualia per vim extorqueri nequeunt n. 20 in (*) p. 212.

In ſpiritualibus, poſtquam ſemel perfecta ſunt, nullus in integrum reſtitutioni locus *ibid.*

In ſpiritualibus ceſſat pœna pœnitentiæ n. 46 p. 266.

In ſpiritualibus non habet locum appellatio n. 47. p. 1661.

*Spoliatus.*

Spoliatus ob vim publicam non poteſt ſeparatim in Camera & de illata damna coram inferiore judice agere num. 12 p. 400.

Spoliatus ante omnia eſt reſtituendus *c. p.* 1398.

Spoliatus poſt intervallum non habet jus dejiciendi adverſarium n. 5. p. 1402.

*Spolium.*

Actio ex dejectione non tranſit in hæredes n. 8. p. 1399.

In ſpolio non attenditur an ſpoliatus jus habuerit, ſed an ſpoliaverit n. 26. p. 169

In notorio ſpolio, etiam regulariter ſe tenetur n. 72 p. 644.

Spolii exceptio intra 15 dies probanda n. 40. p. 947.

*Sponſa.*

Sponſa non cognita ſuam ſortem retinet n. 99. p. 272. in (*) & n. 100. *ibid.* n. 24. p. 980.

Sponſa dando dotem ſe obligat ad conſummandum matrimonium n. 39. p. 486

-- quando eſt in culpa, perdit promiſſa n. 31 p. 981.

-- non habet jure morte n. 21. p. 893 ſi dotem præmoriatur *ibid.*

-- ſibi reſervat facultatem ſolvere matrimonio repetendi ſecundum dotalem, aut ejus pretium n. 29 p. 1014.

Sponſa ſemper hypotheca, non verò prælatio competit n. 34 p. 1371.

*Sponſalia.*

Sponſalia ſunt mutuæ & promiſſio futurarum nuptiarum *c. p.* 973. unde dividuntur *ibid.*

*Tit.* De ſponſalibus *l. p.* 974.

Sponſalia non ſufficiunt ad verum affinitatem *c. p.* 974. niſi copula carnalis ſubſequatur *c. p.* 976.

Sp

Sponſalia ſunt conſenſu ſponſalitio *c. p.* 975. utcunque declaratio n. 34. p. 983. non vitiantur per adjectionem conditionis impoſſibilis n. 107. p. 143.

Sponſalia abſque teſtibus contrahi poſſunt n. 35. p. 983

Sponſalia etiam impuberes contrahunt n. 36 p. 983. n. 43 p. 984. n. 53 p. 985.

In conditionalis obligat ad expectandum conditionis eventum n. 114. p. 154. exiſtente conditione ſtatim perficientur *c. p.* 975 poteſt etiam conditio inſerta, vel remitti ab eo in cujus gratiam adjecta *c. p.* 976. niſi conditio ſuerit acceptata n. 51 p. 985.

Sponſalia conditionalia, à ſponſalibus de futuro differunt n. 20. p. 979. à puris n. 31. p. 982.

Sponſalia de futuro ſunt inſtar pacti de vendendo, ſponſalia de præſenti inſtar venditionis n. 25. p. 980.

Sponſalia ob errorem fortunæ Hamburgi irritantur n. 91 p. 1006.

Sponſalia per dolum procurata contracta, ſunt ipſo jure nulla n. 4. p. 1709.

Nec pendente conditione, ab eo reſiliri licet n. 116. p. 713. n. 56 p. 985.

Sponſalia cum deſponſata ſecum contrahens, infamis eſt n. 15. p. 176.

Bina ſponſalia ſemel contrahens, infamis eſt *l. p.* 172.

Sponſalia plura contrahere, eſt ſpecies polygamiæ *c. p.* 976.

Quid ſi conjux vivente conjuge ſponſalia cum alia perſona celebret? n. 15 p. 176

-- ſuccessive eadem conſtitui poſſunt n. 12 p. 175.

Sponſalia etiam per Procuratorem contrahi poſſunt *c. p.* 975 inter abſentes n. 34. p. 983.

-- non contrahuntur tacito conſenſu ſponſi vel ſponſæ n. 15. p. 186.

Mutuo diſſenſu ſolvi poſſunt n. 107 p. 458

Quod tamen publicæ honeſtatis ratio diſſuadet n. 31 p. 982.

Contra ſponſalia non datur reſtitutio in integrum n. 46. p. 230.

Sponſalia invito patre contrahens, poteſt exhæredari n. 11. p. 289.

Sponſalia clandeſtina quæ ſunt ſine conſenſu parentum. ipſo jure nulla ſunt, licet juramento fuerint confirmata *c. p.* 975. requiritur tamen ut ſententia declaretur.

Sp

clandeſtina interveniat *ibid. n.* 27. 28. *p.* 981.
-- conditionalia per conditionem impoſſibilem regulariter non vitiantur *t. p.* 974 *n.* 31 32 *p.* 982.
-- ex ſola confeſſione copulæ carnalis non probantur *num.* 48 *p.* 984. *n.* 52 *p.* 985.
-- clandeſtina poſſunt haberi pro legitima *n.* 4. *p.* 991.
-- clandeſtina ob intercedentem benedictionem ſacerdotalem non convaleſcunt *n.* 30. *p.* 981
-- vitian ur per clandeſtinitatem, per metum dolum &c. *t. p.* 975. *n.* 58 *p.* 985 *n.* 29. *p.* 997 ſolvuntur morte, renunciatione &c. *t. p.* 977
-- producunt obligationem ad matrimonium implendum *t. p* 976. *n.* 61. *p.* 985 omninò verò recuſantes, invitinon conjunguntur *ibid. n* 46 *p.* 984. niſi copula carnalis ſubſequuta *ibid. n.* 47 *p.* 984.

Sponſalia plura ſi concurrant, tunc publica de præſenti ſunt priora præferenda, licet poſterioribus acceſſerit copula *t. p.* 976. ubi plura & *n.* 54. *p.* 985.
Omnia ſponſalia ſunt de Futuro matrimonio *n.* 21 *p* 979. ſpes nuptiarum *n.* 24 *p.* 980.
Sponſalia à nuptiis differunt *n.* 24 *p.* 980
Sponſalia producunt obligationem ex ſtipulatu *n.* 44 *p.* 984
Sponſalit a largitas *t. p.* 976. *n.* 38. *p.* 983 *n.* 42. *p* 984 *t p.* 1008.
Sponſalitia largitas in numerum contraſtuum relata *n.* 47. *p.* 1016.

*Sponſio.*

Sponſiones cum ludis ſortemur magnam cognationem habent *t. p.* 405.
Sponſiones inter mercatores ſolent eſſe frequentes *t. p.* 405.
Sponſiones per ſe omni jure ſunt licitæ *t. p.* 405.
Sponſiones ſiunt de rebus præteritis & futuris *t. p.* 405 incertis, modo turpitudinem non contineant *n.* 28. *p.* 408 *n.* 33. *ibid.*
Sponſiones poſſunt fieri inæqualiter *t. p.* 405. neque vitiantur ob enormiſſimam læſionem *t. p.* 405. debet tamen abeſſe dolus & captio. *ibid.*

Sp

Quæ deveniat ex ſponſionibus aſſumat? *t. p.* 405.

*Sponſus*

Cautus ſponſus non omnia ſponſæ bona in dotem aſſumit *n.* 32 *p.* 1015.
Sponſi, quantum ad jus prætoriam pertinet, pro conjugibus habentur *n.* 66. *p.* 1270.

*Spontaneum.*

Non id ſaltem ſpontaneum dicimus, quod ſimpliciter eligimus, verum etiam id, quod ob certum finem *n.* 18 in [*] *p.* 211

*Spurius.*

Spurii per legem patrem non habent *n.* 15 in [*] *p.* 289
Spurius eſſe poteſt qui legitimis parentibus erat natus *n.* 36 *p.* 1682.
Spurii & non illegitimi, non ſunt infames *t. p.* 193
Spurii à ſuprema ac aliunt à peonæ ad rubr *p.* 1038
Habent querelam inofficioſi teſtamenti ſi teſtamento matris ſunque excluſi *t. p.* 283 *n.* 16 *p.* 289
Non admittuntur ſi mater illuſtris alios legitimos habeat *n.* 26 *p.* 1247
Spurii, matri & materni ſuccedunt ex damnato coitu nati, ab omni aſcendentium ſucceſſione removentur *t p.* 1259 *n.* 34 *p* 1264. idem de patre adulterino, licet mater fuerit ſoluta dicendum *ibid.*
Spurio quomodo pater ſuccedat? *n.* 55. 56 *p.* 1265.
Spurii ſequuntur domicilium matris *n.* 3 *p.* 1687.

*Stagnum ſeu vivarium.*

Stagno vendito, piſces propagationis gratia ibidem retenti ut acceſſionem emptori cedunt *t. p.* 798.

*Status.*

*Tit.* de Statu hominum *t. p.* 42
Status hominis quadruplex *t. p.* 42 *n.* 1 *p.* 116
Eſt triplex *ibid.* & *p.* 43
In genere ſtatus vel eſt Phyſicus, vel Moralis *n.* 1 *p.* 44.
Et hic vel pure, vel non pure moralis *ib.*
Quid ſtylo Romano denotet? *n.* 1 *p.* 45
Juxta ſtatum naturalem vel maſculi ſunt vel feminæ, vel hermaphroditi *n.* 20. *p.* 50.
Per ſtatum, ſocietate & jure communem reddimur per ſociper *n.* 2 *p.* 45
Libertatis ſtatus non abſolutum exemtio-

St

nem a legum obligatione infert *num.* 5 *p.* 45
An hodie quaſtiones ſtatus occurrant? *n.* 165 *p.* 280.

*Status Imperii.*

Quousque Receſſus Imperii vel mutare, aut iis renunciare queant? *n.* 35 *p.* 18
Conſtitutiones ſtatuum Imperii, etiam Prætorum Edicta, non ſunt comparanda *n.* 9 *p.* 24 & *t p.* 35
Vi ſuperioritatis territorialis leges particulares condunt *t p* 35
An ſtatuum ſubditi JCtorum proteſtant valeant? *n.* 69 *p.* 94 in [*]
Status Evangelici in Eccleſiaſticis ſuperiorem non agnoſcunt *n.* 75 *p.* 95
An duplicem perſonam ſecularem & Eccleſiaſticam ſuſtineant? *n.* 5 *p.* 260.
Gaudent jure de non evocando *n.* 88 *p.* 270 & quamvis illorum ſubditi Viennæ deprehendantur, tamen ibidem conveniri nequeunt *n* 88 *p.* 271 in [*]
Statibus Imperii cautiones per Cameram vel judicium aulicum committuntur *n.* 5 *p.* 1057
Status imperii ſunt imperatores & poſſunt magiſtratibus inferioribus Romanorum in ſuo territorio comparari *n* 149 *p.* 217 *n* 28 *p.* 1660 *n.* 36 *p.* 957
Status Imperii nundinas provinciales impoſſibus privilegiis donare poſſunt *n.* 4 *p.* 1704.
Conveniuntur coram Auſtregis *n.* 162. *p.* 269
Statuum Imperii pacta de non dividendo principatu quatenus admittantur? *n.* 24 *p.* 391.
Principes Imperii legibus civilibus ſunt ſoluti & ſic quoad ſucceſſionem propriam legem ſibi ipſi condere poſſunt *n.* 3 *p.* 747.
Nonnulli Imperii ſtatus habent privilegium electionis fori *n.* 29 *p.* 527
Status Imperii in contractibus utuntur jure privatorum *n.* 13 *p.* 591
Fertis ſuntur reſtitutione *t. p.* 118 *n.* 9 *p.* 121
Poſſunt cauſas ſuas in Camera per ſuos Conſiliarios agere ut ad ordinarios Procuratores non ſint adſtricti *n.* 4 *p.* 167
Status Imperii ratione fortalitiorum habent privilegium *n.* 5 *p.* 1702
Status liberi *n.* 14 *p.* 48 [**]
Status Imperii in ſuis territoriis vi ſuperioritatis territorialis gaudent, ut diceant

*St*

ultra poſſeſſionem prohibitas [illegible] poſſunt n. 49 p. 1062

*Statuta.*

Statuta non ſolum denuo [illegible] habere, ſed etiam decidere n. 29 p. 90

Statuta, utrum legibus an vero conſuetudini accenſenda? n. 25 p. 31

Civitatum provincialium ſtatuta Principum indulgentia conduntur c. p. 35 n. 1 p. 1701 & à Principibus confirmanda n. 44 p. 42

Valent contra jus commune, & in Camera obſervantur n. 40. & 42 p. 41. Itemque in Academiis, ſi ad illas acta fuerint tranſmiſſa n. 41 p. 42 Quae ſtatuta abſque confirmatione ſubſiſtant? n. 45 p. 42 & in [*]

Forma [illegible] conventionem juxta ſtatutum contrarie loci variat n. 6. p. 57.

Statuta, judex ſcire debet n. 170. p. 281.

Statuta non poſſunt legitimam tollere n. 66. p. 294.

Statutum perſonas à legitima excludens, irrationabile reputatur n. 66. p. 294

Statuta ſunt jus quoddam conventionale. Hinc quicquid pacto fieri poteſt, etiam ſtatuto fieri poteſt n. 7 p. 789.

Statuta veſtiaria, Kleider Pracht und Hochzeit-Ordnungen civitates condere poſſunt, nec cives de eorum iniquitate apud ſuperiorem competentem [illegible] ſunt n. 5. p. 1702.

Statuta quando nimis appareant, reſcindi poſſunt n. 5. p. 1701.

Steck Briefe.

Literae arreſtatoriae n. 128. p. 275.

*Stellionatus.*

Tit. De ſtellionatu c. p. 1567.

Stellionatus dicitur omne delictum ſpeciali nomine carens n. 48. p. 809. c. p. 1567. n. 1. p. 1568

Stempel Papier.

Ad eius uſum etiam [illegible] tenentur n. 37. p. 19. in [**]

*Sterilitas.*

Ob ſterilitatem emphyteuta canon non remittitur c. p. 316 n. 21. p. 320. aliud in locatione n. 23. p. 320. c. p. 828. & ſeq. n. 173. p. 848.

Stiffter.

Integrum ſolent JC.orum uni mandare n. 49. p. 92.

*Stipendium.*

Stipendia non ſolis [illegible] ſtipendii [illegible] in juſto praelio capta [illegible] n. 47. p. 1062.

*Sti*

*Stipulatio.*

Tit. De verborum obligationibus c. p. 1462.

Stipulatio quid & quotuplex? c. p. 1462. ad excludendam [illegible] adhibetur n. 13. p. 143. n. 96. p. 1465. Poſſit Jure Romano [illegible] valide reddi ſtipulatione n. 97. p. 152.

Jure Romano alter alteri ſtipulari non poterat n. 18 p. 346. c. p. 1463. n. 22. p. 1466.

Stipulatio plane ſeparata eſt à literarum obligatione n. 79. p. 432.

Stipulatio communis dicitur, quando de loci [illegible] n. 2. p. 1905.

Stipulari poſſunt, qui non impediuntur nec prohibentur c p. 1463.

Cives Romani n. 33. p. 1468. ſtipulari poſſunt rei & ſolis c. p. 1464.

Stipulatio facta alteri obligat ad omnem adhibendam diligentiam, quae ex perſona ſtipulantis fieri poteſt n. 30. p. 1468.

Stipulatio non poteſt fieri per [illegible] n. 7. p. 1465.

Stipulatio an inter contractus referenda? n. 1. p. 1464. & ſeq.

Stipulatio pro reſtituenda dote, ſemper intervenisse praeſumitur, etiam verba non intervenerint n. 24 p. 1014. n. 1. p. 1031.

Actio ex ſtipulatu ex omni cauſione naſcitur n. 2. p. 1465.

Stipulatio inter patrem & filium non valet n. 20. p. 1466.

Tit. De Praetoriis ſtipulationibus c. p. 1902.

Strand-Recht n. 23 p. 573

Stratagemata bellica n. 2 p. 217

*Strena.*

Strenam [illegible] conjuges donare poſſunt n. 19 p. 1024

*Studioſus.*

Habentur pro abſentes reipubl. cauſa & ſic reſtituuntur n. 30 p. 209 in [***] n. 7 p. 235

Landadalium abſens eſt c. p. 233

Studioſi ſcholis ſunt n. 17 p. 73. non poſſunt forum Academicum declinare c. p. 258.

Studioſis danda ſunt viatica, non victica n. 42 p. 266

Cauſa ſtudioſorum [illegible] ſunt ſummariae n. 43 p. 266

Non [illegible] domicilium in Academia

*Stu*

[illegible] alibi [illegible] domicilium ſubeunt ſortiri communicatum n. 102 p. 273

Studioſus in locatione praefertur c p. 818

JC.itorum praerogativa poteſt etiam, 57 p. 278.

Non poteſt agere ad exhibendum eorum Profeſſorem ſcenam in qua exhibent ante ad ſcenam annorum [illegible] n. 11. p. 393.

Quatenus ſtudioſus ludendo perdere poſſit? n. 9 p. 406

Studioſi impedire poſſunt, ne fabri aut alii cum ſtrepitu laborantes in vicinia ædes conducant n. 24 p. 836

Studioſus tempore nundinarum ab hoſpitum adventantes regulariter non tenetur cedere cubiculo ſuo n. 50 p. 841

Studioſus ratione rerum ſortium ablatarum, non habet actionem contra locatorem n. 128 p. 850

*Stultus.*

Stultus non debet eſſe melioris conditionis quam peritus n. 2 p. 1411

*Stuprum, Stuprator, Stupratus.*

Stuprum cum ſœmina virgine, vel vidua honeſtè vivente committitur num. 40 p. 1597

Eſt delictum publicum n. 21 p. 176

Ex ſtupro nati legitimari poſſunt c. p. 54.

Legitimantur per ſubſequens matrimonium, etiamſi etiam alio ſtupratur prius matrimonium contrahat n. 12. in [*] p. 57.

Vi ſtuprum, moralis, ut poena aequetur valida c p. 1589

Stuprum in matrimonio ſolutum non eſt infame n. 50 p. 179

Cum impubere ſtuprum committens ultimo ſupplicio afficitur n 5 p. 1551

Cum ſtuprata conſtituti aliquid emphyteuſis continet n. 67 p. 190

Stupratam ſtuprator ducat aut dotet c. p. 1589 n. 44 p. 1598

Quod tamen in ea, quae [illegible] intelligitur, ceſſat n. 40 p. 1596

Stupro [illegible] juſtus eſt c. p 209

Stupri nomine generaliter intelligitur, omne [illegible] alicui inferendum n. 13 p. 211

Stuprata non eſt ante poenam lites perſecutionem ſe ad [illegible] dixit c. p. 1589

Stuprata quibus praeſumptionibus juvetur? n. 82 p. 455.



Stupra-

Sponſa ſpe matrimonii ad concubitum conſenſum allecta n. 107 p. 458.
Sola ſtupri confeſſio ſufficit adjunctis aliis præſumtionibus n. 107 p. 458
Quod ſtuprator in præmium defloratione pro dote promiſerat, non poteſt repeti etiamſi nuptiæ nullæ ſequantur n. 14. p. 483 & ſtatum ſervandum n. 27 p. 1598 n. 5 p. 1191
Stuprator tenetur 30 annos præſcribitur n. 22 p. 1437
Stupratæ bona ſunt parata pro dote eſt n. 46 p. 1598.
Stuprata ad conſequenda alimenta pro partu, impetrare poteſt immiſſionem in bona ſtupratoris n. 32 p. 894
Stuprator, ejusque hæres ſpurio ad alimenta tenentur n. 9 p. 1195 & impenſas funeris n. 45 p. 1598
Stuprator pœnam quam præmium in lucem editum eſt, alere tenetur num. 9. 10 p. 1038
Stuprum partium accedens de parricidio tenetur, ſi mandante ſtupratore ad ſtatum ambo tenentur n. 3 p. 1610
Stylus Curiæ n. 25. p. 32. ſi negligatur proceſſus annullatur n. 183 p. 282

Subditus.

Alterius ] Comes an etiam poſſit ? vid. Comes.
Contra Magiſtratum cui ſubjectus poſſeſſor poteſt r. p. 165
Subditum ſubditi, etiamſi Vicinum ſuperiorem habeant tamen inde in præjudicium ſuperioritatis territorialis convenire ] nequeunt n. 88 p. 271 in [*]
Regulariter ſubditus emigrandi, denegari nequit n. 105 p. 173, n. 16 37. p. 1689
Subditi, ſervi obedientiarii ſunt num. 264 p. 280.
Subditi ad bellum cogi poſſunt n. 2 p. 1683
Subditi bona, corpus et vitam ſaluti publicæ impendere debent ad ruder p. 1686.
Subditi pro diverſo tit. vocati ſubjectionis dividuntur in Landſaſſen Schrifft vel Cantzley & Amtſaſſen ad ruder. p. 1687

Subhaſtatio.

Subhaſtatio ob æs alienum non eſt ignominioſa ut aliam n. 3 p. 1854
In ſubhaſtatione etiam locum habet jus protimiſeos, ſic creditori præferatur agnatus n. 167 p. 727
Intra tempora ſubhaſtationum, unicuique, meliorem conditionem offerre licet n. 2 p. 724
In ſubhaſtationibus de juris communis prioris licitatori res tacite addicitur, donec ab alio ſuperetur ibid.
Subhaſtationes juxta legem ordinariam judicari debent n. 44 p. 729.
In ſubhaſtatione pretium immobilis loco rei n. 39 p. 735.
Subhaſtatio omnem ſimulationem & fraudem ſuſpicionem excludit n. 135 p. 761
Subhaſtatio non eſt commodum medium indagandi juſtum rei pretium num. 70 p. 750 n. 6 p. 1086
Subhaſta rem emens tenetur ſtare locationi n. 127 p. 845 n. 128 ibid.
Sublocatio n. 40. 41 p. 837
Sub- & Obreptio n. 6 p. 56

Subſidium.

Talia debent eſſe ſubſidia, qualia permittuntur à ſuis prædiciis n. 92 p. 548 in [*]

Subſtantia, Subſtantialia.

Subſtantialia contractuum ſunt, quæ ad conſtitutionem alicuius contractus neceſſario requiruntur n. 122 p. 711. & per pacta adjecta mutari nequeunt ibid.
Subſtantialia in mutuo commodato, depoſito, emto, feudo &c. ibid.

Subſtitutio.

*Tit.* De vulgari & pupillari ſubſtitutione r. p. 1126
Subſtitutio eſt ſecunda hæredis inſtitutio r. p. 1126 varia eſt ibid. & ſeqq. n. 1 p. 1128
Tacita pupillaris n. 42 p. 292
Pater liberis pupillariter ſubſtituit r. p. 55.
Quomodo ſorores etiam ſubſtituantur n. 17 p. 289.
Subſtitutio pupillaris non exigit præviam inſtitutionem n. 30 p. 1131
Subſtitutio in codicilis facta ſuſtinetur in vim fideicommiſſi r. p. 1126
Subſtitutio qua teſtamento conſtituit r. p. 1126 n. 9 p. 1129
Subſtitutio pendet quamdiu conditio ſuperest n. 21 p. 1130.
Subſtituuntur qui hæredes eſſe poſſunt r. p. 1126
Subſtitutus ſubſtituto eſt etiam ſubſtitutus inſtituto n. 11 p. 1129
In ſubſtitutione partes æquales conſtituunt, quæ fuerunt in inſtitutione r. p. 1127 n. 12 p. 1129
In ſubſtitutione etiam impuberum eaſdem volentiam regulariter non includit r. p. 1127 contraria ſententia verior n. 17 p. 1129.
Subſtitutio impuberibus facta in vim fideicommiſſi ne quidem valet, niſi propter clauſulam codicillarem r. p. 1127
Subſtitutio extinguitur variis modis r. p. 1127
Subſtitutio exemplaris ſive quaſi pupillaris r. p. 1127
Subſtitutio ultra pubertatem regulariter non valet n. 36 p. 1132
Subſtitutio breviloqua n. 56 p. 1134
Subſtitutiones aliæ ſunt mixtæ num. 59 p. 1134
Subſtitutio non valet, quoties perſona inducitur ſpecialis num. 49 p. 246 n. 1 p. 578
Subſtituti Schatz-Bewahr legibus civitatis obtemperare, non ab epiſcopo creantur n. 16 p. 49

Succeſſio.

*Tit.* Quis ordo in poſſeſſionibus l. a. ſucceſſionibus ſervetur r p. 1258
Succeſſio deſcendentium n. 15 p. 1261
Jura ſucceſſionum inter adoptantem & adoptivum non ſunt tempora num. 21 p. 64
In ſucceſſione mobilium attenditur ſtatuta domicilii, in immobilium verò ſtatuta rei ſitæ n. 28 p. 75
Spem ſuccedendi in immobilibus habentes à cautione non ſunt immunes r. p. 111 & n. 22 p. 115
Quo ad ſucceſſionem non ſufficit nuda renunciatio, ſed juramento confirmari debet n. 3 p. 747
Succedendi jus, quo tempore præſcribatur impedito quaſi eſt n. 40 p. 1157
Succeſſio fideicommiſſaria non ſiſtitur in gradu quarto ſed in infinitum fieri poteſt n. 3 p. 1212
In ſucceſſione Prætoris agnoſcenda, quid obſervandum ? n. 6 p. 1258
Succeſſio ex gradus paritate vel proximiore unice æſtimatur n. 1 p. 1255
Succeſſio ab inteſtato ſimpliciter dicitur legitima r. p. 1258
In Anima collateralis non aſcendentibus non agnatorum n. 48 p. 1261

Su

Inter ascendentes remotiores excluso proximiore n. 42 p. 1264
Ad ascendentes cum fratribus utrinque successio fit in capita n. 45 p. 1264
Jure successionem regulariter fieri [illegible] n. 49 p. 1265 quod fallit in [illegible] adoptante n. 54 p. 1265
Successio in stirpes inter collaterales tunc obtinet, quando defunctus talem reliquit personam quæ ob gradus proximitatem alios excluderet n. 58 p. 1266
Successio in capita tunc locum habet quando Germanorum liberi soli succedunt n. 59. 60 p. 1266.
Successio Unilateralium n. 62 p. 1268.
Ubi de successione conjugum quæritur, primo attendenda sunt pacta dotalia n. [illegible] p. 1271
Successio in mobilia vel immobilia [illegible] p. 1271. 72

*Successor.*

Successorem expectaturi plerumque revocant n. 36 p. 41
In principe successore duplex est obligatio n. 37 p. 41
Successor [illegible] contrahere potest c. p. 1335
Successor universalis in vitia & virtutes defuncti succedit n. 41 p. 1341
Successor singularis contractuum [illegible] non habet nisi [illegible] refert c. p. 825
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In successorem singularem non transit omne jus defuncti n. 108 p. 843
Tit. De successorio Edicto c. p. 1296
Successorium Edictum habet locum in personis diversi ordinis c. p. 284. personis ejusdem non diversi ordinis quæ sint n. 28. 29. p. 291
Successorum [illegible] vid. [illegible], [illegible] vid. [illegible].

*Suffraganei.*

Olim [illegible] licebat n. 48 p. 146
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*Suggestio.*

Suggestio [illegible] sub pœna [illegible] n. 27 p. 1629.
Tit. De damno infecto, & de suggrundiis & protectionibus c. p. 1279

*Suggrunda.*

[illegible] n. 16 p. 373. in [*] c. p. 1279 n. 1 p. 1281

Su

*Summa.*

Summa appellabilis pro diversitate fori [illegible] n. 32 p. 1660
In hanc summam non computantur usuræ n. 36 p. 1662.
Summa revisibilis est 200 thal. n. 124 p. 1667
Major summa minorem continet ergo in hanc etiam [illegible] videntur, c. p. 241. n. 182 p. 719.
Summarium processus vid. *Processus.*

*Sumptus.*

Sumptus Doctorales non sunt conferendi c. p. 1239 n. 26. p. 1243.
Sumptus studiorum non conferuntur, nisi credendi animo fuerint à patre suppeditati n. 13. p. 385. in [*] n. 34. p. 1295.
Sumptus studiorum non pertinent ad pias causas n. 5 p. 198 in [*] non imputantur legitimæ c. p. 286 n. 92 p. 296 idem de sumptibus Doctoratus ibid. p. 297
Sumptus studiorum [illegible] parte [illegible] repeti possunt c. p. 592.
Sumptus studiorum regulariter nomine alimentorum non continentur c. p. 1038. n. 15. p. 1039. n. 4. p. 1295. n. 34 p. 1295
Sumptus funerales repetuntur ex quasi contractu cum defuncto, hinc nec heres illos prohibere potest qui [illegible] de illorum repetitione protestatur [illegible], quia sic de animo repetendi constat c. p. 412. hi sumptus sunt privilegiati c. p. 1365. n. 15 17 p. 1368
Modum sumptuum funeralium alii [illegible] [illegible], sine quibus funus honestè duci non potest c. p. 412. de contrario vid. n. 54 p. 417 in [*]
Sumptus [illegible] non pertinent ad alimenta n. 2 p. 1295.
Sumptus funerales etiam medici in [illegible] defuncti facti, non repetuntur c. p. 412. non tamen solo [illegible] [illegible] & [illegible] [illegible] n. 55 p. 417.
Sumptus in [illegible] [illegible] an pertineant? ibid.
Sumptus funebres omnes alios [illegible] præcedunt n. 42. p. 416.
[illegible] heres illos suppeditare prohibeatur n. 45 p. 416 & seq.

Su

Sumptus [illegible] in concursu creditorum sunt privilegiati c. p. 1365.
Sumptus funerales [illegible] [illegible] [illegible] præstandi sunt pro [illegible] n. 46. p. 417.
Aliud est [illegible] ad [illegible] funeris aliud ad [illegible], n. 50 p. 417.
In [illegible] [illegible] sunt sumptibus [illegible] n. 24 p. 394. n. 172 p. 465.
Suo [illegible] quod habere vel Jus.

*Suus.*

Tit. De his, qui sui vel alieni juris sunt. c. p. 53.
Jus [illegible] sive familiæ accipiunt adoptio & arrogatio n. 15 p. 62. Non tamen [illegible] [illegible] ibid.
Tit. De suis & legitimis hæredibus c. p. 1278
Differentia inter suos & emancipatos [illegible] n. 7 p. 1123
Suorum effectus in transmissione [illegible] [illegible] est n. 4. 6. p. 1154
Suus heres [illegible] [illegible] [illegible] [illegible] [illegible] potestativa conditione [illegible] c. p. 1134
Suus heres se immiscere vel abstinere dicitur c. 6. n. 7 p. 1054 n. 30 p. 1156
Suus est [illegible] [illegible] [illegible] à defuncto [illegible] [illegible] n. 4 p. 1154.
Suus heres post [illegible] repudiatam hæreditatem repetere potest n. 35 p. 1156.
Sui adhuc hodie ipso jure heredes sunt & [illegible] hæreditatem non aditam transmittunt n. 2 p. 1246 n. 5 p. 1256
Sui & emancipati ad æqualem successionem vocantur n. 5 p. 1256

*Superficies.*

Tit. De superficiebus c. p. 1403
Jus superficiarium c. p. 318
Est vel Ecclesiasticum vel seculare, perpetuum vel temporale c. p. 1403.
Superficiarius in solo nullum jus habet n. [illegible] p. 1403
Superficiarius propriis sumptibus [illegible] [illegible] c. p. 1403.
Superficiarii & emphyteuticarii differentia n. 1 p. 1404 & seq.
Superficiarius et [illegible] possidens [illegible] c. p. 112.
Superficiarius habet utile dominium c. p. 1403 n. 1 p. 1404
Jus superficiarium est perpetuum & [illegible] [illegible] [illegible] [illegible] revertitur n. 23 p. 1406.




Habe

Su

Habet utilem rei vindicationem *t. p.* 306. *t. p.* 1403 & *seq.*
Superficiarius cloacarum inventum ſibine acquirit? *t. p.* 1307 *n.* 1 *p.* 1405
Superficiarius tributa, collectas & onera publica praeſtare tenetur *t. p.* 1408
Superficiario contra quemvis turbantem etiam ipſum dominum competunt remedia poſſeſſoria *t. p.* 1404 *n.* 16. 17. 18. 19. 20 *p.* 1409
Superficies ſerviens non eſt *n.* 2. 3. *p.* 1405
Jus ſuperficiarium conſtituitur voluntate domini *n.* 5. 6. *p.* 1405. ſine ſolo poſſideri poteſt *n.* 10. 11 *p.* 1405
Superficiarius proprietatem non ſibi ſed domino poſſidet, nec illam praeſcribit *n.* 25 *p.* 1406.

*Superfluum.*

An legi Anaſtaſianae locus, cui ſuperfluum illud adjudicandum? *t. p.* 745

*Super reductum.*

Super reductum dicitur quod ultra id quam Princeps indixit, fuit exactum *n.* 10. *p.* 1693

*Superlativus.*

Superlativus non ſemper ſignificat extremum in ſummo gradu *t. p.* 539
Superlativus ſaepe ponitur pro poſitivo & vice verſa *n.* 92 *p.* 548 *n.* 222 *p.* 852

*Suppellex.*

Suppellex juris intellectu quandoque habetur pro re immobili *t. p.* 69.

*Supplicatio.*

Supplicatio eſt remedium extraordinarium *t. p.* 1657.
Supplicatio contra ſententias in Judicio Aulico admittitur *n.* 23 *p.* 1659.
Supplicatio admittitur adverſus praefectum praetorio, quia habebat, jus de non appellando *p.* 77. & 78.
Supplicatio in Ducatu Brunſvvicenſi eſt remedium ordinarium *n.* 37 *p.* 1354. *n.* 121 *p.* 1647. vid. etiam *Libellus.*

*Supplicium.*

Supplicium gravidae differendum donec pariat. *t. p.* 44.
Poſt partum editum vero illico ſupplicio affici poteſt, ita tamen ut unus vel alter dies non excludatur *n.* 30 *p.* 53.
Supplicium capitale in civitate *Brandenburgi* aliquando Senatorem irrogaſſe fertur *n.* 51 *p.* 179. de Republica Ebraeorum vid. *ibid.*

Su

Supplicium ad appellationem cujusvis differendum *n.* 16 *p.* 1659.
Surdus *n.* 63. *p.* 148.
Regulariter, poſtulando repellitur *n.* 10. *p.* 168. in [*]

*Surrogatum.*

Surrogatum habet indolem ſurrogati *n.* 41 *p.* 777.
συναλλάγματα ſponſione vel in vita referuntur ad judicium commutativum. *p.* 2.

*Suſpectus.*

-- de fuga ſuſpectus vid. *fuga.*
-- Judicem ſuſpectum partibus recuſare licet *t. p.* 255. haec recuſatio fieri debet ante litem conteſtatam *t. p.* 255 cauſae in libello ſunt exprimendae *n.* 76 *p.* 269.
Suſpectus eſt, qui non ex fide, i. e, ut probus paterfamil, tutelam gerit. *n.* 9. *p.* 1070.
*Tit.* De ſuſpectis Tutoribus & curator *t. p.* 1069.
Suſpecti poſtulari poſſunt omnes tutores etiam teſtamentarii *n.* 8 *p.* 1070.
Suſpecti accuſatio facit, ut ſuſpecto interdicatur adminiſtratio *n.* 6. *p.* 13.
Suſpecti tutoris accuſatio *t. p.* 1069.
Suſpecti poſtulatio etiam tutoribus honorariis incumbit *n.* 5 *p.* 1070.
Ratione malae adminiſtrationis collegae ſe invicem ſuſpectos facere debent *n.* 8 *p.* 1701.

*Suſpicio.*

-- ſiniſtra ſuſpicio non cadit in illum, cui jura ſuccurrunt *n.* 6. *p.* 56.
-- ſiniſtra opinio legitimandi partus ſeptimeſtri officit *n.* 7 in [*] *p.* 56.
Cauſae ſuſpicionum certa regula definiri non poſſunt *t. p.* 255.

*Suum.*

Suum eſt, quod per actionem peti poteſt *n.* 13. *p.* 7
*Tit.* Pro ſuo (ſc. uſucapi poteſt) *t. p.* 1347.
*Tit.* Pro ſuo, ſine bona fide eſſe non poteſt *n.* 11 *p.* 315.

*Syndicatus.*

Syndicatus *t. p.* 1658. num. 135. 136. *p.* 1668.
*Syndicus* *t. p.* 193.
Invitus ad Syndicatum cogi poteſt *t. p.* 193. tranſigere poteſt *t. p.* 156. *n.* 18. *p.* 159.

Su Ta

Eſt vel perpetuus, vel temporalis *n.* 2. *p.* 195.
-- aliquando à lege conſtituitur *n.* 4. *p.* 195 ad ejus conſtitutionem Principis conſenſus non requiritur *n.* 9 *p.* 195.
Omnia licita collegia habent ſyndicum *t. p.* 193. & ad ejus conſtitutionem in ſolidum univerſitates tenentur *n.* 2 *p.* 195. in [*]
Qui procurator, etiam Syndicus eſſe poteſt *t. p.* 194. eandem habet poteſtatem, quam procurator cum libera *ibid.* juramentum defert, non praeſtat *ibid.*
-- plures conſtitui, in ſolidum conſtituti cenſentur *t. p.* 194.
-- in dubio ad omnes lites *t. p.* 194. alias poteſt ad certam cauſam dari *n.* 3. *p.* 195. etiamſi ordinarius ſit conſtitutus *n.* 12 *p.* 196.
Inſtrumento Syndicatus, ſe legitimè conſtitutum probat *t. p.* 194 aliquando etiam confirmationem tenetur producere debet *n.* 5 *p.* 195.
-- Ejus culpa tenetur univerſitati idque omne damnum datum reſarcire debet. *t. p.* 194. *n.* 16 *p.* 196.
Officium ſyndici finitur ut procuratoris *t. p.* 194
In multis tamen ſyndicus à procuratore differt *n.* 2 *p.* 195. in [*] *n.* 17 *p.* 196.
Sub cautione de rato admittitur etiamſi nullum mandatum habeat *n.* 15 *p.* 196.
*Syngrapha* *t. p.* 850. *n.* 9. *p.* 954.

*Lit. T.*

*Taberna.*

Habens tabernam non ſtatim *n.* 13. *p.* 114
Tabernae nullus eſt uſus, niſi claudatur *n.* 9. *p.* 358.

*Tabula.*

*Tit.* De tabulis exhibendis *t. p.* 1504.
Tabulae pictae cedit *n.* 56. *p.* 1318.

*Tacitum.*

Omne tacitum regulariter eſt legale *n.* 2. *p.* 141. *n.* 2. *p.* 891.
Tacitum non eſt nimis extendendum *n.* 24. *p.* 39.
Res magni momenti tacitè transferri non ſolent *n.* 86. *p.* 96.
Tacita regulariter eadem ſtatuit, quae expreſſa *n.* 43. *p.* 292. *n.* 13. *p.* 483. *n.* 3. *p.* 666.
Omiſſum judicatur ex expreſſo *n.* 34 *p.* 882
Multa expreſſa nocent, quae non expreſſa non nocent *n.* 52. *p.* 189.

*Ta Te*

In mente retentum nihil operatur n. 13. p. 483. n. 34. p. 983. n. 5. p. 1452.

Tacitè rejecta cenſentur, quæ in ſententia fuerunt neglecta, à qua tacita rejectione appellandum n. 11. p. 308.

Tacitum ſive Legale pignus, quibus competat c. p. 889. & 890.

Tacita Reconductio n. 19. p. 835.

Tacitè multa permittuntur, quæ expreſsè prohibentur n. 1. p. 1092.

*Taciturnitas.*

Taciturnitas aliquando habetur pro mandato c p. 181.

— Non ſemper pro conſenſu accipitur n. 15. p. 186.

Parentum taciturnitas in ſponſalibus habetur pro conſenſu n. 14. p. 186.

Non verò ſponſi vel ſponſæ *ibid.*

Taciturnitas deambulationem videtur approbare n. 3 p. 1038.

Taciturnitas regulariter non nocet, niſi quis reſpondere habeat neceſſe n. 7. 8. p. 396. n. 12. p. 1140.

Extra judicium quilibet ſalvo jure ſuo conſitetur tacuiſſe num. 44. p. 544. n. 113. p. 843.

*Taxa, Taxatio, Taxatrix vid. Partitio.*

Liberi non tenentur ſtare taxationi parentum, ſi illa vergat in præjudicium legitimæ c. p. 286.

Teſtator, taxare res ſuas pro libitu poteſt, modò taxatio non tendat in præjudicium legitimæ n. 55. p. 776.

*Templum.*

Templum cum pago venditum cenſetur, licet ſpecialiter nō æſtimetur n. 58 p. 805

*Tempus.*

Temporis ratio, quomodo in eo, quod certo loco debetur, habenda? num. 10. p. 524.

Tempus contractus, non verò quod ſupervenit in æſtimanda læſione attendendum n. 175. p. 910.

Tempus ad excludendam immodicam læſionem nihil confert n. 42. p. 777.

Solum tempus non eſt modus transferendi dominium, aut jus reale n. 156 p. 847

Tempus utile, ratione tertii dicitur, quod non currit, niſi ſcienti n. 33. p. 9. 2.

Tempus continuum n. 2 p. 1435.

Tempus deliberandi vid. *deliberatio.*

Ad certum tempus conceſſa, eo elapſo cenſentur revocata n. 22. p. 30.

*Te*

Tempus naſcendi conſideratur in termino à quo, & ad quem c. p. 53. 54.

Tempora naſcendi ſunt incerta n. 7. p. 56 & in [*] & n. 9. p. 57.

Tempora ob luſtum incerta reddi poſſunt n. 10. p. 57.

Tempus legitimæ nativitatis datur etiam per ſubſequens matrimonium legitimatis c. p. 54.

Tempus retrotrahitur ſubſequente matrimonio ad tempus conceptionis n. 11. in [*] p. 57. & n. 13. *ibid.*

Non ex tempore oritur juris illud vinculum, quod inter dominum & emphyteutam intercedit n. 29 p. 321.

Tempus computatur, vel civiliter vel naturaliter hoc modo computatur, ſi de Majorennitate quæritur c. p. 223. n. 4. p. 225. & in [*] p. 226.

Quodnam tempus in mutuo attendendo reſpiciatur? n. 49. p. 427.

Temporales actiones vid. *Actiones.*

*Tergiverſatio.*

Tergiverſatio eſt delictum atrox c. p. 1649 n. 1. *ibid.*

*Tegula vid. Tignum.*

*Tergum.*

Tergum ſubſidiarium n. 96. p. 97. n. 51. p. 515.

*Terminus.*

Terminus citationis non debet eſſe nimis anguſtus; in Camera eſt arbitrarius, in Senatu ſex ſeptimanarum & trium dierum c. p. 103. num. 52 p. 108. n. 39. p. 946.

De diverſarum ſententiarum terminis *ibid.*

Terminus citationis currit à tempore inſinuationis n. 57. p. 108.

Terminus quando dicatur circumductus n. 59. in [*] p. 105.

Termino peremtorio lapſo, nihil minus requiritur ſententia Declaratoria n. 29 p. 122.

Termino probatorio elapſo, mox jus quæſitum eſt adverſario n. 33. p. 122. n. 38 p. 946.

Secunda dilatio probatoria, non niſi cum cauſæ cognitione datur n. 35 p. 946.

Terminum juſtificandi arctatum ſub pœna invaliditatis præciſè obſervandum n. 1. p. 891.

Sufficit intra terminum probatorium exhibuiſſe articulos probationis & nominaſſe teſtes n. 38 p. 946.

Terminus probatorius non labitur, quamdiu injuncta probatio impugnatur n. 38 p. 946.

Terminus probatorius eſt quidem arbitrarius, ſed tamen peremtorius n. 38. 40 p. 946.

Poſt terminum probatorium, non verò concluſionem in cauſa inſtrumenta producere licet n. 68. 69. p. 959. & 60.

*Tit.* De termino moto c p. 1568.

Terminus hic eſt omne ſignum, confines agros diſtinguens c. p. 1568.

Terminorum mutatio, bellis quandoque anſam dare ſolet n. 2. p. 1569.

Quæ hinc delicto ſancita pœna? num. 4. p. 1569.

*Terra, territorium.*

JCtis Extra territorium conſulere nequit n. 65 p. 93.

Terra Eccleſiæ quæ ſit? n. 51 p. 1104.

Territorii poſſeſſio apprehenditur per ſignorum affixionem n. 21 p. 1330.

*Terrores.*

Quæ ad mulier pepererit diſſerenda n. 30 p. 53.

Tertio n. 47 p. 1630.

*Teſtamentum, Teſtator.*

Ad Teſtamentum jure Naturali, vel Gentium duo teſtes ſufficere poterant n. 36 p. 18.

Teſtamenti factio eſt juris publici, nec privatus teſtamenti condendi facultatem alteri concedere poteſt n. 3. p. 1098.

--ità interpretandum, ut voluntas teſtatoris eventum habere queat n. 9. p. 338.

Legitimatio per teſtamentum n. 17 p. 58

Inſinuatio teſtamenti non requirit cauſæ cognitionem n. 7 p. 89.

Judex apud ſe propriam teſtamentum inſinuare poteſt n. 13 p. 89 c. p. 83. n. 172. p. 281.

Tranſactio contra teſtamentum, niſi fuerit inſpectum, non valet p. 157 n. 5 p. 158 n. 27 28. p. 160.

Inſinuatione teſtamenti jura non veniunt n. 4 p. 141.

Teſtamenta plenam interpretanda, ut contineat ultima teſtatorum elogia n. 97 p. 709.

Teſtamentum quod inſtituendum videri,

Te

n, quo ad reliqua capita ſuſtineri poteſt n. 8 p. 140.

Teſtator verum mentem exprimere per ſe voluiſſe eſt n. 4 p. 210 n. 29 p. 997. n. 10 p. 1165

Tit. De inofficioſo teſtamento t. p. 283. vid. inoff. teſtam.

Tit. De Teſtamentaria cautela t. p. 1048.

Teſtamento per querelam inofficioſi impugnato, de jure civili etiam reliqua ejus capita reſcinduntur t. p. 284

Teſtamentum in totum etiam quo ad legata corruit, ſi hæres repudiat hæreditatem n. 27 p. 290

Filio repudiante hæreditatem, pater nihilominus poteſt movere querelam inofficioſi n. 28 p. 291.

Teſtamentum approbans, non aliud videtur renunciaſſe, niſi petendi illud, quod amplius deberur n. 54 p. 239.

Teſtamento tutores dantur impuberibus in poteſtate patris conſtitutis t. p. 1049

Aliud eſt teſtamentum, aliud ejus ſolemnia factum impugnare t. p. 284.

Defectus ſolemnium teſtamentum facit ipſo jure nullum n. 2 p. 286.

Aliud eſt, teſtamentum inofficioſum, aliud quod nullum eſt, hoc 30 annis impugnari poteſt n. 2. p 286. n. 1 p. 973 n. 6 p. 1110.

Patri & matri Nov. 15 conceditur ſubſtituendi, vel exheredandi neceſſitatem injungere n. 7 p. 287. n. 10 p. 1113.

In teſtamentum ſuo, ne leges obſtent, nemo efficere poteſt n. 78 p. 610 n. 9 p. 1120.

Impugnatis nemo pro parte teſtato & intestato deſcendere licet n. 120 p. 710. n. 25. 26. p. 1114.

Factio teſtandi ſemper debet eſſe libera n. 4 p. 748 n. 11 p. 1166.

Teſtamentum juxta leges interpretandum n. 43. p. 1116.

In dubio quilibet ad teſtandum habilis præſumitur t p. 1096.

Teſtamentum parentum ſive privilegiatum non valet quoad perſonas extraneas n. 30. p. 1050.

Nemo in teſtamento ſuo facere poteſt, ne leges in eo valeant n. 22. p. 1050.

Teſta menti effectus eſt univerſalis, nec ei tamen aliquid adimpetur n. 23 p. 1050

Quæ in teſtamento ſcribuntur, non debent dependere ex alterius arbitrio n. p. 1093 & n. 1. p. 1098.

Facultas teſtandi per conventionem non poteſt impediri t p. 1096 n. 27 p. 1100

Teſtamenti forma ſubſtantialis, eſt hæredis inſtitutio t. p 1096.

Teſtamentum quotuplex? t. p. 1096. & ſeq. n. 37 p. 1103.

In teſtamento nuncupativo eadem, quæ in ſcripto, excepto illo, quod per literam expeditur, requiruntur num. 73. 76. p 1106.

Teſtamenta unius plura eodem fieri poſſunt t. p. 1097. & in uno teſtamento plures eſſe n. 42 p. 1103 n. 24 p. 1113

Teſtamento ſolemniter facto, ut ſit aſſiſtentium, eorum teſtibus &c. t. p. 1097 n. 43 p. 1103

Conveniat loci conſuetudo hoc ſuſpicienda t. p. 1097. n. 50. 51. p. 1104.

Si hæredes inſtituuntur, qui ab inteſtato ſucceſſuri erant, tunc 5 teſtes ſufficiunt t. p. 1128.

Actus ultimæ voluntatis inſtrum non conveniunt, quia ſemper ſunt revocabiles n. 10. p. 1099.

Teſtamento ſolemnitas aſſumitur ex ſolemnibus loci, ubi teſtamentum conditum n. 15 p. 1079.

Teſtamentũ Principi oblatum n. 13. p. 1101

Teſtamentum per Procuratorem aſſerri poteſt n. 32 p. 1102.

Teſtamentorum ſolemnitates per conſuetudinem mutari poſſunt n. 51. p. 1104.

Teſtamenta à fideicommiſſo differunt n. 1. p 1108.

Teſtamenti factio alia activa, alia paſſiva n. 13. p. 1113. n. 8. p. 1275.

Teſtamenti factio non eſt juris promptivi ſed permiſſivi n. 42. p 1297.

Teſtamentum quod ab initio nullum eſt, nec clauſula codicilli ſuſtinetur t. p. 1117.

Teſtamentum nullum tot modis n. 1. 1119.

Teſtamentum validum quomodo rumpitur? t. p. 1117. & ſeqq. vel irritum redditur t. p 1118. n. 1 p 1119.

In teſtamento nemo ſibi legem dicere poteſt, à qua ipſi non liceat recedere n. 59 p. 1123.

Teſtamentum mutare licet, etſi quis juraverit, ſe teſtamentum non mutaturum n. 23. p. 1121. n. 1. p. 1199. Nec revocationi teſtamenti renunciari poteſt n. 31 p. 1301 Aliud ſi poſtea quis poenitere, ſe nolle mutare teſtamentum n. 23. p. 1121.

Teſtamentum poſterius tollit prius n. 38. p. 1123.

Teſtamentum per ſolam contrariam voluntatem non mutatur, ſed ejus ſolemnitates inſuper requiruntur n. 29. p. 1122 n. 36. p 1133. n. 2 p. 1199.

Si teſtator in ipſo actu teſtandi moriatur, nihil agit, & prius conditum teſtamentum in vigore manet n. 45. p. 1124.

Teſtamentum mutuo conſenſu conjugum conditum, an à ſuperſtite conjuge mutari queat? n. 14. p. 1128.

Teſtamentum vivo teſtatore nunquam præſcribitur n. 27 p. 1122

Teſtamentum per inſinuationem non aliter quam fuit inſinuatum valere num. 55. p. 1123

De duplici teſtamento pariter n. 46 p. 1124.

Teſtamentum deſtitutum non dari aſſeritur n. 52 p. 1124

Quæ in teſtamento alicui injunguntur, hanc tacitam habent conditionem, ſi ſupervixerit n. 40 p 1132. n. 6 p. 1207

Tit. De teſtamento militis t. p. 1142

Teſtamentum parentum eſt teſtamentum minus ſolemne t. p. 1143 inter teſtamenti requiſita ſunt ut teſtamentum à parente ſcribatur vel ſubſcribatur, omniumque liberorum nomina apponantur, tempus & dies adjiciatur t. p. 1144 n. 24 p. 1147 n. 36. 37 38 p. 1150

Teſtamentum parentum inter liberos ſic modo privilegiato, nec rumpitur niſi teſtamento ſolemni poſteriori n. 5 p. 1200

Teſtamentum parentum differt à diviſione parentis n. 43 p 1150

Teſtamentum parentum inter ſolos liberos ut privilegiatum valet n. 27 p. 1147.

Teſtamentum ad pias cauſas exceptum parentis n. 32 p. 1147

Teſtamentum peſtis tempore conditum t. p. 1144

Inofficioſum tempore peſtis conditum non tantum teſtium ſed ſolum aliorũ juſtitia remiſſa eſt t. p 1145 n. 45 p. 1150. Idem de teſtamento tempore belli condito n. 47 p. 1151 n. 54. 55 aliud.

Teſtamentum Ruſticum t. p. 1145

*Te*

In hoc testamento 5 testes sufficiunt c. p. 1245 n. 50 52 53 p. 1 51 idem dicendum si moriens ruri condiderit c. p. 1298.

Testamentum semel legitimè conditum effectum habet perpetuum num. 49 p. 1251.

Tit. Testamenta quemadmodum aperiantur c. p. 1259

Testamenti apertura quomodo fiat? n. 2. 5. 6. 7 p. 1161

Testamento apertum sequitur publicatio c. p. 1160

Testamento aperiendo statim post mortem testatoris fieri expedit n. 1 p. 1160

In testamentis privatis sole conditis solennis apertura necessaria est n. 4 p. 1161

Testamenti apertura sit sumptibus hæreditis n. 16 p. 1162.

Tit. Si quis omissa causa testamenti ab intestato vel alio modo possideat hæreditatem c. p. 1162

Tit. De SCto Silaniano & Claudiano quorum testamenta ne aperiantur c. p. 1163

Tit. Si quis aliquem testari prohibuerit vel coegerit c. p. 1164

Qui testari prohibent ipso [illegible] excidunt c. p. 1164

Tit. In tabulis testamenti [illegible] c. p. 1236.

Tit. Si quib. testam. nullum [illegible] liberi c. p. 1254

Quando testamentum in conditionis [illegible] instrumento, tunc [illegible] num. 1 p. 1261.

Testamentum Holographum n. 69. p. 1105.

Tit. De tabulis exhibendis c. p. 1304

Tit. Qui Testamenta facere possunt c. p. 1095

Testamenta condere omnes, qui non impediuntur, non prohibentur c. p. 1095

Tit. De injusto, rupto irrito facto testamento. Et de his, quæ in testamento delentur c. p. 11 7 p. 1236.

Testator hæredes [illegible] tenetur n. 57 p. 1181.

Testator non prohibetur hæredem voluisse gravare n. 50 p. 1178.

Testatoris in ejus voluntate partes, quam [illegible] debent præsumuntur n. 3. p. 238.

Testator pro habere [illegible] tamen potest n. 33. p. 174.

Testator non potest prohibere, ne legitimam supplementum petere c. p. 285.

*Te*

Testator non à certa persona certo pretio rem comparentem, hanc de [illegible] quæri non potest c. p. 767.

Testium subscribere testamentum, nisi sit holographum n. 69. p. 105.

Testator quorundam testimonio non potest prohibere c. p. 1217.

*Testes.*

Tit. De testibus c. p. 960.

Testes ad testamentum septem requiri, ut [illegible] est n. 36. p. 13

Unus testis, nullus testis n. 191. p. 469.

Qui unum testem de visu, & unum de visu habet, is plene, quam semiplenè probavit n. 203 p. 478.

Testes in causis ordinariis quidem, non verò in summariis admittuntur n. 70. p. 501

Testibus dicta [illegible], concurrentes &c. n. 42. p. 947.

Pro defensione rei testes inhabiles admittuntur n. 55. p. 517.

Testes inhabiles admittuntur in criminalibus, non ut inde reus condemnetur, sed ut ad torturam gravetur num. 23. p. 944.

Testes in perpetuam rei memoriam ante litem contestatam producuntur c. p. 940.

Testes regulariter à reo producuntur n. 29. 30 p. 946.

Si periculum, e. g. mortis sit in mora, tum à quovis Judice examinari possunt c. p. 961.

Testis de credulitate deponenti regulariter nulla adhibetur fides n. 4. p. 942.

Testium productio necessaria n. 28 p. 945

Testium productio, non nisi sub solemnitate legali permittitur n. 35 p. 946

Contra inhabilitatem testis à teste contrarium admissionem protestandum n. 25 p. 945

In possessorio summariissimo testes absente adversario coram Notario examinati subscribentium probationem faciunt n. 6 p. 942.

Testes quando non sub [illegible] producere licet? n. 32. p. 946.

Testes verò, tunc se cum [illegible] major, non est adhibenda ad [illegible] condemnationem, nisi [illegible] ejus probatio alia adminiculis persuasum n. 8 p. 942.

*Te*

*Testes de auditu.*

Auditus regulariter non probat, ubi tamen de sensibus quæritur, illi admittuntur n. 23 p. 182

Testis potest super [illegible] contrahendam consensum n. 24. p. 307.

Testibus contra sententias deponentibus nequam non creditur c. p. 964.

Testem quem adversarius pro se producit, illum contra se admittere tenetur n. 52 p. 968.

Testes simpliciter absque reservatione admittere, tacitè eum personam approbasse censetur n. 53 p. 968.

Testis vacillans, nisi se emendet non creditur n. 57 p. 969. n. 58 p. 971 n. 63 p. 972.

Testium productio [illegible] n. 61 p. 972

Testium nova productio, facta publicatione attestationum non permissa est n. 62 p. 1434.

Testes sumptibus producentis sistendi n. 66 p. 971.

Testes reddere tenentur rationem depositionis suæ n. 69. p. 973.

Depositio viva voce fieri debet num. 70. p. 972.

Testium numerus cum distinctione sunt computanda n. 71 p. 972.

Testes examinantur cuncti ad voluntatem [illegible] partibus n. 72 examen sit in secreto n. 73 p. 972.

Testamentum de eo, quod quis [illegible] n. 20. p. 965.

Testes in testamentum adhibendi, specialiter debent esse rogati, & in testatoris conspectum adesse &c. c. p. 1097. n. 46. 47 48 49 p. 1104.

Testes debent audire & videre testatorem c. p. 1298.

Testes in testamento non [illegible], sed sufficient gen. adhibentur n. 48 p. 1104.

Testium numerus septenarius in [illegible] accuratè observandus, ut tamen computetur Notarius, qui testamentum suscepit n. 50 p. 1104.

Si sint testium [illegible] c. p. 1118

Testes in testamentum adhibiti, si subscriptionem, non verò signaturam, vel signaturam quidem, sed non subscriptionem de testamento, pro non adhibitis habentur n. 65. p. 1105.

Te-

*Te*

Teſtis de ſcito deponens, debet nominare [illegible] ſcien. n. 16. p. 1629.

Teſt. [illegible] nomine in inſtrumento exprimi ſufficit n. 42. p. 957.

Teſtes omni exceptione majores *s. p.* 960 ſunt claſſici teſtes, ſummi [illegible] probationem n. 2. p. 904.

Teſtes inhabiles [illegible] ſiunt poſſunt n. 24. p. 965.

Teſtes inhabiles in crimine [illegible] ad mittuntur *s. p.* 1582.

Teſtes citantur & examinantur à judice vel commiſſario cui judex hoc commiſit *s. p.* 960.

Alienæ juriſdictioni ſubjectus invitus teſtari non compellitur *s. p.* 961. valet tamen examinari [illegible] n. 13. p. 965.

[illegible] in civilibus per [illegible] compulſus [illegible] [illegible] [illegible] vero [illegible] debet de jure civili *s. p.* 961. n. 12. p. 964.

Teſtium habitas conſideratur tempore, depoſitionis & examinationis *s. p.* 961.

Teſtes eſſe poſſunt, qui non impediuntur nec prohibentur, quales recenſentur *s. p.* 961. 62. & 63.

Cui teſtamento [illegible] [illegible], ille teſt. eſſe nequit in alio negotio n. 26 p. 965.

Teſtis in propria cauſa repellitur *s. p.* 962.

Qui in teſtamento teſtes eſſe prohibentur, *s. p.* 1097. n. 53. 54. p. 1104. n. 59. p. 1105.

Domeſtici hic admittuntur n. 57 p. 1104.

Teſtes inhabiles judex adverſario petente repellit *s. p.* 963. n. 52. p. 968.

Teſtes inhabiles in [illegible] cauſis admittuntur n. 52. p. 968.

Exceptiones contra perſonas teſtium poſt publicatum teſtimonium ſub certis ſolemnitatibus admittuntur *s. p.* 963. n. 53. p. 968.

Teſtes [illegible] cogantur ad teſtimonium dicendum *s. p.* 963. n. 55. p. 986. [illegible], etiam [illegible] n. 96. p. 969. p. 1626. n. 65. p. 1631. quod fallit in certis perſonis, ut conſanguineis [illegible] [illegible] &c. *s. p.* 963.

Teſtis à dicendo teſtimonio, eo non liberatur, quod dicat ſe juramentum præſtitiſſe de non dicendo teſtimonio n. 96 p. 969.

*Thalamus*

De conſummatione Thalami: [illegible] [illegible] [illegible] des [illegible] n. 12 p. 992.

*Th Ti*

*Theſaurus.*

Theſaurum non venit nomine [illegible] n. 7 p. 727. n. 20 p. 1316.

Theſaurus in fundo vendito non traditionem inventus, venditori adjicitur *s. p.* 798.

Theſaurus eſt donum fortunæ n. 76 p. 812.

Theſaurus jure Gentium inventori [illegible] [illegible] vero [illegible] acquiritur *s. p.* 1307.

De jure civili diſtinguitur utrum theſaurus in loco privato eoque proprio an alieno atque ſervato an data opera fuerit inventus *s. p.* 1307.

Theſaurum in ſuo inveniens dominus lucratur n. 76 p. 812.

Theſaurus in fundo dotali inventus n. 38. p. 1016. *s. p.* 1307. [illegible] n. 19 p. 1315.

Theſaurum inveni quomodo aliquando [illegible] [illegible] *s. p.* 1307.

Theſaurus ex quibus indiciis dignoſcatur? n. 16 p. 1314.

Theſaurus ad illum pertinere cenſetur in cujus ædibus ſuit repertus n. 16. p. 1314.

Theſaurum per virgulam [illegible] [illegible] licet n. 24. p. 1315.

*Theta.*

Thil. [illegible] pænæ & [illegible] n. 15. p. 1642.

Thil. *s. p.* 987.

*Tignum.*

Tit. De tigno juncto *s. p.* 1525.

Tignum alienum junxit, [illegible] [illegible] domino ad duplum *s. p.* 1525. n. 6. p. 12. p. 1526.

An junctum, ſi ædificium diruatur, ab [illegible] [illegible] liberari poſſit? n. 10. p. 1526.

Tignum [illegible] [illegible] & vendicare in [illegible] [illegible] n. 27. p. 309. [illegible] ad [illegible] [illegible] n. 22. p. 394. ne urbs ruinis deformetur n. 58. 59. p. 1319. n. 67. p. 1320.

Tignum alienum [illegible] ſua ædibus adhibuit, pro poſſeſſore habetur, & contra illum [illegible] [illegible] n. 65. 69. p. 1320.

Tignum rebus immobilibus accenſetur n. 38. p. 75.

Servitus tigni immittendi [illegible] [illegible] *s. p.* 348. n. 8. p. 349.

Quomodo hæc jure [illegible] n. 25. p. 362.

*Ti*

Tigni appellatione continetur omnis materia ex qua ædificium conſtruatur. 5. p. 1526.

Actio de tigno juncto infirmitur, non tamen abrogata n. 18. p. 1527.

Tiro vid. *Tyro.*

*Titulus*

Qui titulus ad transferendum dominium habilis eſt, ille etiam ſufficit ad transferenda reliqua jura realia n. 25. p. 328.

Eſt vel ex contractu, vel ex teſtamento n. 7 p. 260.

Titulus legibus non probatus, non impedit [illegible] n. 22. p. 491.

Titulus regulariter oſtendus non eſt à [illegible] [illegible] in actione n. 70. p. 754. num. 47. p. 1353.

Titulum [illegible] poſſeſſionis oſtendus eſt, quando rei vel jus ſine titulo poſſideri nequit n. 25. p. 502.

Titulus [illegible] ex circumſtantiis rerum et perſonarum præſumi poteſt n. 70. p. 754.

Titulus in præſcriptione [illegible] non requiritur n. 21. p. 328.

Titulus ad præſcriptionem neceſſarius non eſt, quando initium poſſeſſionis ab ipſo domino [illegible] n. 23. p. 328.

Titulus ex lapſu 30 annorum præſumitur n. 61. p. 1343.

Titulus pro ſuo vid. [illegible].

Per titulum ſingularem poteſt aliquid jure univerſali [illegible] in [illegible] [illegible] n. 32 p. 750.

[illegible] titulum commiſſis non nominate de [illegible] transferendi dominium conſtat n. 34 p. 1317.

[illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] probationis [illegible] n. 12 p. 1338.

*Titulus.*

Officium [illegible] die [illegible] n. 67 p. 812.

*Tormenta.*

Tormenta cum uſibus vendita cenſentur *s. p.* 798.

Tormenta in bello capta non ſunt capientium ſed ad illum pertinent [illegible] [illegible] bellum gerit n. 26 p. 1679.

Torneamentum [illegible] [illegible]-Spiele.

De Jure Canonico ſunt prohibita num. 4 p. 406.

In Schild und Helm-Ritter und [illegible] mäſſig gehalten werden n. 2. p. 1042.

To

*Torture.*

Poſtea [illegible] [illegible] quam mori, quia eam [illegible] [illegible] n. 21. p. 51.
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Tuto-

*Tu*

**Tutorum.**

Omnes tutores hodie tutorium aliquod accipere debent, etiamſi teſtamento ſolenniter dati n. 7 p. 1052.

Niſi tutor confirmatus ſit ab eo judice, coram quo agitur t. p. 1060 n. 8 p. 1061

Tutores valide conſtituti varias de cauſis excuſantur, quas enarrantur t. p. 1071.

Tutor ſe excuſans à tutela coram id à matre quod ipſi tutanti tutelæ relictum n. 3 p. 1072.

Tutor excuſatione probata ſtatim liberatur, eo vero reſecta ejus eſt periculum à tempore delatæ tutelæ t. p. 1072. n. 27 p. 1074

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Tutor ſalarium non petit, niſi ipſi fuerit à judice conſtitutum n. 5 p. 1079

Tutores operas extraordinarias, gratis præſtare non tenentur n. 6 p. 1079

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*Tit.* Quod falſo tutore auctore geſtum eſſe dicatur t. p. 1080

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*Va*

*Lit. U.*

*Vacatio* ſive *Immunitas.*

*Tit.* De Vacatione & excuſatione munerum, & de jure immunitatis t. p. 1694

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*Vagabundus.*

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*Variatio.*

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Vaſallus in fundo feudali, ubi jus patronatus habet, ſepulchrum ædificaturus ſubditos ad præſtandas operas cogere poteſt n 4 p. 418.

Vaſallus ſub conditione alteri feudum vendens ob ſpretum domini conſenſum, feudo privari poteſt n. 11 p. 727

Vaſallus feudi fructus ad dies vitæ oppignorare poteſt n. 30 p. 863

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Vaſallus feudum in præjudicium agnatorum oppignorare nequit n. 14 p. 908

Vaſallus ſi in cauſa criminali contra dominum teſtimonium dicat, feudo privatur t. p 963.

In Vaſallo integritas naturalium requiritur n. 22. p. 1263.

In vaſallo integritas naturalium requiritur n. 22 p. 1263.

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Dominum feudi abſque venia impetra-

*Va Ve*

tione in jus non vocat t. p. 102. vide plura in verb. *Dominus feudi.*

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*Tit.* Si ager vectigalis, id eſt, Emphyteuticarius petatur t. p. 315.

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Vectigal recipiens tacitè ſecuritatem promiſiſſe cenſetur n. 30 p. 1290. & res rapta ablatas gratis reſtituere tenetur *ib.*

Vectigal lattiſſimè ſignificat omnem penſionem & præſtationem, tam publicam quam privatam t. p. 315.

Vectigal in ſpecie, eſt penſio, quæ pro invectione & evectione mercium in littore vel pontibus ſolvitur t. p. 1286. regulariter prometrabus negotiationis gratia in & evecta *ibid.*

Vectigalis & Emphyteuticarius ſunt ſynonyma t. p. 315.

Si quis caſſæ vectigalium crediderit, vectigal compenſari poteſt n. 16 p. 638.

Vectigal conducere, qui prohibeantur? n. 16 p. 1289.

Vectigalis Receptores publicani non ſunt n. 6 p. 873

Vectigal regulariter non ſolvitur in noſtro n. 15 p. 1289.

Vectigal imponit Imperator cum Statibus t. p. 286.

Vectigal omnes ſolvunt, niſi ſpecialiter ſint exempti t. p. 1286.

Vecti-

Ve

Veſtigalia ad [illegible] [illegible] & [illegible] [illegible] [illegible] debent c p 1286
Veſtigal non [illegible] de rebus in proprium uſum [illegible] ad [illegible], [illegible] [illegible] c. p 1286.

*Venatio.*

Venatio generaliter conceſſa ad [illegible] reſtringitur n 79 p. 40.
Jus venandi à jure [illegible] [illegible] n. 80. p 97.
Venatio c p. 1307.
Qui in [illegible] [illegible] prohibitum [illegible] venatur, [illegible] [illegible] [illegible] c. p. 1307.
Ob [illegible] [illegible] [illegible], ob venatio[illegible] n. 12 p. 1313.
Venatio non Regalibus [illegible], quia [illegible] [illegible], [illegible] per privilegium, aut [illegible] [illegible] [illegible] [illegible] n. 13 p 1313.
Venatio eſt vel *Major* vel minor n. 13 p. 1313. & ſeq.
Venationes ſimpliciter in literis inveſtiturarum conceſſa, [illegible] conceſſa cenſentur n. 13 p 1313.
Venationem [illegible], [illegible] [illegible] [illegible] ſalva [illegible] [illegible] n. 13 p 1314.
Venatio [illegible] [illegible] tempore [illegible] prohibita. n. 13 p 1314.

*Venditio.*

Ad venditionem [illegible] [illegible] [illegible] n. 30 p. 426.
[illegible] [illegible] [illegible] [illegible] [illegible] [illegible] venditio [illegible] poteſt, [illegible] [illegible] [illegible] de ſuo [illegible] vendat, ſi [illegible] [illegible] n. 10 p. 701
An ſi [illegible] [illegible] [illegible]. 6 p 2021
[illegible] [illegible] [illegible] [illegible] poteſt venditionem [illegible], qui [illegible] [illegible] vel [illegible] eſt [illegible] [illegible] [illegible] [illegible] [illegible] vendere [illegible] n. 70 p 706.
Si à pluribus [illegible] [illegible] facta [illegible], [illegible] [illegible] eſt [illegible] c p. 323

*Venditio Fiſcalis, vid. Fiſci.*

*Tit.* De [illegible] [illegible] vendito, c. p. 703.
Venditio per [illegible] [illegible] [illegible].
Venditio [illegible] [illegible] [illegible] [illegible] [illegible] venditor ad intereſſe obligatur, [illegible] n. 53 p. 705.
Venditio [illegible] n. 64 p. 706.
Venditio rei [illegible] n. 65 p. 706.
Venditio rei [illegible] n. 66 ibid.
Venditionem [illegible] [illegible] [illegible] [illegible] poſſunt n. 75 p. 708.
Venditio [illegible] [illegible], & ob [illegible] [illegible] [illegible] poteſt n. 85 p. 708.
Venditio *pro* [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] valet n 95 p. 709.
Venditio [illegible] prohibita c. p. 55 & [illegible] [illegible], [illegible] [illegible] habet n. 21 p. 59.
Vendi [illegible] [illegible] non [illegible] [illegible] prohibetur ſub pœna [illegible] n. 48. p. 751.
Venditio ſub conditione facta, [illegible] conditione, venditio [illegible] eſt, n. 128 p. 71[illegible]
Venditio ſub conditione [illegible] facta, [illegible] conditione [illegible], [illegible] [illegible] facta [illegible] c. p. 722
Venditio conditionata imperfecta eſt [illegible] obligationem & actionem, ſed non [illegible] [illegible] n. 26 p. 720.
Venditio ſub pacto [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] poteſt n. 8 p. 1305
Venditio pro parte [illegible] [illegible] n. 42 p. 729.
Venditio ſub haſta vid. *Subhaſtatio.*
*Tit.* De hereditate vel actione vendita, c. p. 737
Venditio hereditatis futuræ, [illegible] [illegible] valet c p 737
Venditio actionis [illegible] eſt c p. 738. [illegible] [illegible] prohibita, [illegible] [illegible] [illegible] [illegible] plus exigat, quam pro [illegible] ſolverit n. 39 p. 752.
Etiam ſolus vel [illegible] debitor n. p. 758.
Vendi [illegible] [illegible] [illegible] & [illegible] [illegible], [illegible] & [illegible] &c. c. p. 759.
*Tit.* De reſcindenda venditione, & quando [illegible] ab emptore diſcedere, c. p 765.
Venditio, an ſit valida, an verò reſcindenda, [illegible] [illegible] n 1 p. 771
Venditio facta [illegible] [illegible] [illegible] [illegible] c p. 790.
*Tit.* De periculo & commodo rei venditæ, c p. 785.
Res in [illegible] [illegible] vendita, à [illegible] [illegible] [illegible] c p. 795.

*Venditor*

Venditor non tenetur [illegible] dominium [illegible], ſed [illegible] n. 82 p. 813.
— Non tenetur præcisè dominium transferre, ſed tantum [illegible], ut habere liceat n. 77 p. 750.
— Debet [illegible] [illegible] [illegible] c p. 794. 799.
— Si [illegible] [illegible], [illegible] [illegible] [illegible] [illegible] n. 98. p. 183. n. 20 p. 809.
— Re perfecta [illegible], [illegible] [illegible] [illegible] n. 9 p. 182.
Qui ſub pacto de [illegible] vendidit, non retinet dominium n. 196 p. 775
Qui eſt [illegible] [illegible], poteſt [illegible] [illegible] in [illegible] n. 8. in [?] n 10 p. 185 n. 12 p 207 in [?]
— Non venditor ad ſe [illegible] [illegible] [illegible] n. 21. p. 319.
Venditor non tenetur [illegible] dominium probare n. 82 p. 813.
— [illegible] [illegible] [illegible] [illegible] de [illegible] [illegible] c. p. 363. n. 7. p. 364.
Venditor ſub [illegible] lege [illegible] [illegible] [illegible] poteſt n. 76. p. 610
Qui rem alienam vendidit, non [illegible] [illegible] de evictione, quam ſi [illegible] [illegible] c. p. 690.
Qui rem, quæ non eſt in commercio, vendidit, obligatur ad intereſſe n. 53 p. 705.
Venditor [illegible] [illegible] [illegible] [illegible] poſſunt [illegible] [illegible] poteſt n. 131 p. 729.
Venditor [illegible] [illegible] ad [illegible] n. 197 p. 910
Venditor non [illegible] [illegible] ſed [illegible] [illegible] [illegible] [illegible] poteſt n. 4 p. 753.
Venditor [illegible] [illegible] [illegible] [illegible] [illegible] venditorem à poſſeſſione [illegible], [illegible] n. 4 p. 756.
Venditor [illegible] [illegible] [illegible] [illegible] [illegible] ſolidum [illegible] n. 37 p. 729.
Venditor hereditatis [illegible] [illegible] [illegible]

*Ve*

tenetur tamen tradere hereditatem ea-
tenus, quatenuſcunque ea ſit ſ. p. 737 n. 8 p. 748 licet eam rurſus amiſerit ibid.

Non præſtat ea, quæ ex alio, quam hæreditario capite habet ibid. Neque debet dominum ex hereditate illa vendita factum ſ. p. 738. Hinc legata, quæ præſtitit, & æs alienum quod ſolvit, & expenſas in funus defuncti factas, repetit ibid. ſi quod ex voluntate morientis ſolutum ſolvit. n 24 p. 750.

Venditor hereditatis, creditoribus hereditariis, legatariis & fideicommiſſariis emptor reſpondere, quod tamen hiſce præſtitit, ab emptore actione ex empto repetit ſ. p. 738 n. 28 p. 750. & poſſit his venditor emptori litem denunciare n. 30 p. 750.

Imò, breviſſima via eſt, ut ea, quæ nomine hereditatis præſtitit venditor, illico in illius traditione deducat n 23. p. 750. Vel cautionem ſufficientem interponat emtor de ære alieno ſolvendo n. 37 p. 750.

Venditor Nominis, ceſſionem revocare nequit, etiamſi pretium non fuerit numeratum n. 108 p. 758.

Venditor non poteſt ſibi beneficium vindicare, quod emtor ex ſua perſona habet n 138 p. 761.

Venditori ſuccurritur ex edicto de his, quæ in fraudem creditorum fiunt, ſi res in eius fraudem alienata ſ. p. 769.

Venditor reſcisſa emptione refundere pretium ſine uſura ſ. p. 771. Poſt moram verò cum uſura n. 91 p. 782.

Venditor precario rem tradere tenetur n. 20 p. 803.

Venditor minimum pretium accipiendo et læſus here, ſi tamen res vendita apud emptorem perierit, non plus reſtituat, quam ultra verum rei pretium accepit n. 54 p. 779.

Tenetur etiam venditor, licet res culpa emptoris perierit n. 55. 57 p. 779.

Venditor principaliter ad læſionis emendationem eſt obligatus n. 55 p. 779.

Venditor ab vitiorum evictione non tenetur n. 32 p. 807.

Venditor venditione nondum perfecta, æqualiter periculum ſuſtinet ſ. p. 786

Venditor liberatur caſuali vel interitu ſ. p. 785.

*Ve*

Niſi moram fecerit in tradendo n. 14. 15 p. 789.

Venditor cuſtodiam promittens, caſum fortuitum recepiſſe non videtur ſ. p. 786 Exactiſſimam tamen cuſtodiam n. 45 p. 792. n. 19 p. 790.

Venditor tenetur, ſi animal ante traditionem moriatur n. 2 p. 790.

Venditor tamen cedere tenetur actiones quas fortè habet ſ. p. 786.

Venditore pretium accipere nolente, pecunia obſignata judici offerri poteſt n. 31 p. 930.

Venditor rei venditæ dominium abdicavit dici nequit n. 2 p. 788. n. 118. p. 816.

Venditor licet in re vendita ſibi dominium reſervaverit, non tamen tenetur de periculo n. 40 p. 789.

Venditor, ſi fidem de pretio habuerit eiuſque emtoris creditoribus non præfertur n. 8 p. 802.

Venditor vitium oſtendere poteſt, ſi emtor moram fecit in numerando n. 39 p. 791.

Venditor licet rem venditam, quaſi pignus retinet, datur integrum pretium conſequatur ſ. p. 794.

Venditor nihilominus evictio tenetur, & ſi nihil de ea dictum ſit. ſ. p. 795.

Si res vendita ſervitutem debeat, & ut optima maxima vendita fuerit, venditor tenetur ad intereſſe. ibid. n. 44. p. 809.

Venditor rem venditam à pignoris nexu tenetur liberam præſtare ſ. p. 796. & ab ære alieno n. 42 43. p. 809.

Nec non fructus naturales emtori cedere ibid.

Venditor, vel venditoris inſtrumenta ob metum evictionis reddi tenetur ſ. p. 799. n. 81 p. 813.

Venditor Evictionem ex natura contractus præſtare tenetur, licet nihil caveatur ſ. p. 799.

Etiam rationem ſervitutum, niſi in ſpecie doceatur, ſe de ſervituti nullo n. 33 p. 807.

Venditor uſuras pretii tardius ſoluti rectè exigit ſ. p. 802. Cavere tamen, ut emtori etiam in reliquo ceſſans ſit certus ibid. n. 121 p. 816.

Venditor ante conſignationem judicialem adhuc hypothecam conſervare poteſt n. 27 p. 806.

*Ve*

Venditor etiam etiam tenetur quanti admiſit n. 25 p. 807.

Venditor non poteſt pretium exigere, ſi emtor rem ab alio redemit n. 102. p. 814.

Neque ob vitia ſupervenientia n. 22. p. 912.

Venditor ob vitia manifeſta non tenetur n. 32 p. 807 ſ. p. 909.

Venditor equi in Saxonia de tribus vitiis tenetur n. 15 p. 912.

*Venefici.*

Venefici deficiunt à Deo, & ſunt infideles n. 24 p. 1100. Veneficium ſ. p. 1604 & ſeq.

In veneficio crimine occidendi, ſunt dubia requiſita n. 19 p. 1607.

*Venenum.*

Venenum promiſcuè omnibus vendendum non eſt n. 63 p. 706.

Datum veneni crimen n. 28 p. 1609.

Veneni propinati ſigna in functibus apparent n. 18 p. 1607

*Venia.*

Veniæ impetratio vid. Claudo

*Veniæ ætatis.*

Veniam maris maſculis 20 fœminis 18. annis majoribus conceditur ſ. pag. 223.

Qui veniam ætatis impetravit, omnia agere poteſt, quæ, ſi minorem haberet, gerere poſſet ſ. p 223. n. 8 p. 226.

Contra acta, quæ geſſit, qui veniam ætatis impetravit, non datur reſtitutio ſ. p. 223.

Contra veniam impetratam verò, reſtitutio peti poteſt n. 10 p. 226.

*Venter.*

Venter, vid. *Poſthumus, item mulieres.*

*Tit.* De ventre inſpiciendo cuſtodiendoque partu ſ. p. 1040.

Ventri in proſpiciendum, ut etiam filius cum gravida matre relictus filium quartam conſequatur ſ. & n. 4. p 304

Venter ſignificat mulierem prægnantem *ad vitæ* p. 1040.

*Tit.* De ventre in poſſeſſionem mittendo & de curatore ejus ſ. p. 1246.

*Verba.*

Non debent eſſe ſine effectu n. 39. p. 292.

Ve-

*Ve*

Verba obliqua quænam? *n.* 26 *p.* 729.
Verba generalia non extenduntur ad illa quæ magni momenti ſunt, & ſpeciali expreſſione opus habent *n.* 85. *p.* 841.
*Tit.* De verborum Obligationibus *t. p.* 1462.

*Veritas.*

Magis valet, quam quod ſimulatè ſcriptum *t. p.* 156.
Veritas convicii an proferentem excuſet? *n.* 24. *p.* 1542.

*Verſio in rem.*

*Tit.* De in rem verſo, *t p.* 616.
Verſio in rem non eo probatur, quod pecunia in neceſſarium uſum fuerit data nec quod accipiens vertere ſolet, ſed in ſuper rem revera verſam eſſe probari debet *n.* 23 *p.* 368. *n.* 7. 11. 12. *p.* 617. non tamen requiritur ut effectus verſionis adhuc ſuperſit *num.* 5 *p.* 617.
Verſio in rem ſi poſſit probari, exceptio Macedoniani ciderctur *n.* 37 *p.* 594.
Ubi verſio in rem probari poteſt, ibi actio de in rem verſo locum habet *n.* 99. *p.* 614. in [*]
Quod ad voluptatem pertinet, non videtur in rem verſum *t. p.* 616. neque ulterius quam revera verſum extenditur *n.* 9 *p.* 617.
Si duo concurrant, de in rem verſo agere volentes, locus eſt præventioni *n.* 13 *p.* 617. De in rem verſo unus ſolum experiri poteſt *n.* 14 *p.* 617.
Verſio in ſocietatem à ſocio facta præſumitur *n.* 77 *p.* 686.
Actio de in rem verſo, non datur in ſolidum, ſed tantum in quantum in rem verſum eſt *n.* 78 *p.* 686.
Verſionem in rem ibi probare opus non eſt, ubi voluntate præponentis negotium geſtum eſt *n.* 83 *p.* 686.

*Verſura.*

Verſura proprie quid? *n.* 157 *p.* 769.

*Veſtimentum.*

Veſtimentorum verbo eſt uſusfructus an quaſi? *t. p.* 334 Quis effectus hujus quæſtionis *n.* 5 *p.* 335.
Contenta eſſe debet proprietarius, ſi ipſis veſtis ſine dolo malo attrita reddatur *n.* 19 *p.* 341.

*Vi*

*Veſtis.*

Veſtis neceſſaria ſemper habetur loco rerum cohærentium *n.* 70 *p.* 812.
Veſtis legatum quid contineat? *n.* 4 *p.* 1196.

*Veteranus.*

*Tit.* De veteranis *t. p.* 1684.
Veteranus eſt qui legitimè ſtipendia implevit *t. p.* 1684.
Veteranus procurator eſſe poteſt *n.* 52. *p.* 189.
Veterani ab oneribus ſunt immunes *n.* 3. 4. *p.* 1686.
Veteranus licet ſponte munus aliquod ſuſcipiat, non tamen ob hoc ad alia ſubeunda poterit compelli *n.* 3 *p.* 1685

*Vexatio.*

Vexatio debitorum odioſa eſt *n.* 133. *p.* 761. *n.* 143. *p.* 762.

*Via.*

De via publica, & ſi quid in ea factum eſſe dicatur *t. p.* 1396.
An via publica die Sabbati peregrinantibus interdici queat? *n.* 11 *p.* 121.
Via publica antiqua propter vectigal tenenda *n.* 9 *p.* 353.
Servitus viæ quid? quæ latitudo in porrectum & anfractum conventione partium mutari poteſt *t. p.* 352. *n.* 9. *p.* 353.
Via, iter & actum complectitur *n.* 10 *p.* 353.
Vias publicas ſecuras eſſe, omnium intereſt *n.* 6. *p.* 374. *n.* 12 *ibid.*
Viarum publicarum obſeſſio *num.* 3. *p.* 1601.
Viam, quam quis elegit, ipſe declinare nequit *n.* 159. *p.* 464.
Via uſitata neutrei, dolo haud vacat. *n.* 22 *p.* 1289.
De via publica & itinere publico reficiendo *p.* 1396.
Viarum publicarum ſecuritas ſanctè cuſtodienda *n.* 22 *p.* 1534.
In via publica vel alibi, per minas alicui pecuniam extorquere qui nititur, licet vim non inferat, nec pecuniam conſequatur, gladio puniendus & corporis imponendum *n.* 5 *p.* 1557.
A collecta ad viarum publicarum refectionem exacta, nec Academici, nec Clerici immunes ſunt *n.* 5 *p.* 1699.

*Vi*

*Vicinus, Vicinitas.*

Vicinitas dicitur de prædio urbano *t. p.* 378 *n.* 18 *p.* 381.
Vicinitatis cauſa multa contra jus commune conceduntur *n.* 108. *p.* 710.
Ob vicinitatem jus protimiſeos regulariter non obtinet, niſi ſpecialiter receptum doceatur *n.* 167. *p.* 717.
Vicinus ob ruinoſas vicini ædes poteſt petere cautionem de damno infecto, licet ædes intermediæ non ſint vitioſæ *n.* 10 *p.* 1281

*Victoria.*

Victoria unius ſæpe alteri prodeſt *t. p.* 284. Exempla ſunt in *n.* 4 *p.* 287 *n.* 19 *p.* 289 *n.* 20 *p.* 290 *n.* 22. 23 *ibid.* in ſervitute vindicanda *n.* 10 *p.* 357 Socius ſi ſuper re communi ſuit litigatum *n.* 6 *p.* 1566.

*Victualia.*

Victualia à ruſticis ad urbem allata ab ſupercurrentibus civibus non debent emi *n.* 15 *p.* 701. *n.* 2 *p.* 1615

*Videtur.*

Videtur non ſemper eſt nota Conjecturæ, ſed aliquando elegantiæ *n.* 78 *p.* 192.
Ein Vidimus, oder Vidimirte Copey *n.* 15 *p.* 954.

*Vidua, Viduitas.*

Viduæ appellatione etiam virgo venit *n.* 152 *p.* 278.
Vidua retinet forum mariti *t. p.* 256
Vidua intra anni lugubris ſpatia nubens, dotem amittit *n.* 9 *p.* 57 non vero portionem ſtatutariam *n.* 18 Et eſt infamis *p.* 172 *n.* 11 *p.* 175 *t. p.* 985
Vidua honeſtè vivens pro legitimitate poſthumi bonam facit præſumtionem *n.* 10 *p.* 57.
Attendendum, an alios liberos habeat, nec ne, alias illam præſumptio capitis hereditatis gravat *ibid.*
Niſi defunctus non ſit lugendus *n.* 13 *p.* *p.* 175 nubat cui velit, non quando *n.* 14 *p.* 176 *n.* 40 *p.* 998
Poteſt tamen ante annum luctus finitum ſponſalia contrahere *n.* 12 *p.* 175 vel etiam nuptias ſi non ſit gravida *num.* 14 *p.* 176.
Viduam liſtatis datem non ſit infamis *t. p.* 173.


Vidua

*Vi*

Vidua triumfi dotes, aut illuſtris ſit, habet privilegium Miſerabilium perſonarum n. 150 p. 278

Vidua legatum ſub conditione viduitatis ſibi relictum praeſtita cautione Mutiana petere poteſt t. p. 987

Vidua habitationem per paſſa dotalis quaeſitam, aliis locare poteſt n. 5 p. 738.

Vidua Nobilis, an ratione Viduitatis privilegia retineat? n. 112 p. 340

Viduitatis promiſſio, etiā jurata facta, non valet t. p. 967 n. 36 p. 997

Vidua nocēs mariti quomodo expediatur? n. 2 p. 368.

Viduae jura, tam perſonalia, quam realia ſibi competentia, viduitate amittit n. 114 p. 175.

Viduam tamen lugere non tenetur n. 10 p. 175.

Vidua jus praelationis in fundo vi paſſorum dotalium conſeruās dotem directo mariti pertinentem, illud ſicut cedit n. 119 p. 760.

Vidua eandem dotem ſecundo, quam primo conſtituit, conſtituiſſe cenſetur n. 11 p. 1000.

Vidua poſt mariti obitum aū luctus morſa neque oppreſſa cenſetur, ut de aliis rebus valde ſollicita eſſe non debeat n. 3 p. 1059

*Vigilantia.*

Vigilantibus jura ſunt ſcripta, non negligentibus n. 21 p. 236

Ad Rubricam p. 1580.

Turnum Vigiliam n. 48 p. 1630

*Vindicatio.*

Tit. De rei vindicatione t. p. 306. Quid & quotuplex? t. p. 306.

Rei vindicatio per exhibitionem poteſt ſocialari n. 18 p. 164

Rei vindicatio poteſt locum habere in mutuum ſeſſo n. 35 p. 215 in [*]

Romam contra eum, in quem res judicii mutandi cauſa ſunt translata n. 11 p. 250

An haec vindicatio ſit directa actio? n. 65 p. 312 in [*]

Oritur ex dominio rei corporalis t. p. 306 Haec directa datur domino, et utilis [illegible] ei, qui poſt litem conteſtatam de novo dominium acquiſivit t. p. 306. n. 22 p. 512.

Si vero utrumque poſt judicium acceptum dominium amiſerit, reus abſolvitur t. p. 306.

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Ad vindicationem ſufficit, ut quis jus in re habeat n. 3 p. 308

Utilis vindicatio datur ſuperficiario, Emphyteuticario, Vaſallo, Legatario, Conſtitutio pupillo, Minori, Eccleſiae, Militi & Uxori t. p. 306 n. 15 p. 309

Datur etiam contra fictum poſſeſſorem, qui ſe ait fraudulenter obtinuit ibid.

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Res vindicandas deſignet actor n. 30 l. p. 310 Vindicatio non recipit augmentum n. 43 p. 311 Res vindicatio cedi & vendi poteſt n. 11 p. 309 n. 11 p. 327.

Pro vindicatione jurium datur actio Confeſſoria & Negatoria n. 29 p. 310

Rei vindicatio cum actione Publiciana alternativè in uno libello jungi ſolet t. p. 313.

Qualis eſt dominium actoris, talis etiam eſt vindicatio n. 1 p. 308 t. p. 356

Rem vindicans, declarans dominium, ſcil. reſpectu adverſarii n. 61 p. 312 nec pretium reo, quod pro re ſolvit, reſtituere tenetur, etiamſi illam à ſe in foro emerit t. p. 377 Niſi ab hoſte poſſeſſor rem redemerit n. 65 p. 312 Quomodo verò, & cujus ſumtibus reſtitutio facienda? n. 65 p. 312

Quomodo rei vindicatio & Publiciana differunt? ad rubr. p. 308

Qui rem furto alterius deliſſe noſcit, à quovis eam vindicare poteſt n. 7 p. 489

Vindicatio à rei vindicatione diſtinguenda n. 1 p. 308

Rei vindicatio competit Proprietario, ſimul uſufructu t. p. 340

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*Vinea.*

Vinearum diē ſeriō colendae ſunt t. p. 119

*Vinum.*

Tit. De tritico, vino & oleo legato t. p. 1592.

*Violentia.*

Ingreſſio per violentiam impulſa, pro facta habetur n. 4 p. 100

*Virga.*

Virga aliquando veritas explicatur n. 49 p. 1630.

*Virgo.*

Imperator Leo virginibus adoptandi jus conceſſit num. 9 p. 62.

Virgo etiam vidua dicitur n. 152 p. 278.

Non tamen habet beneficium viduitatis ib.

Virgini tempore eſt gratia aetas & forma, pro dote, & ſi ſunt vulnerata illam aeſtimare poteſt n. 25 p. 365. in [*] n. 48 p. 372.

Ne virgines & matronae honeſtae contemnantur, inhoneſtae mulieres ex viciniis pelli poſſunt n. 10 p. 401 in [*]

Datur depoſitum virginis: ſeu virgo deponi poteſt ex l. 3 ff. de Lib. Exhib. n. 17 p. 655

Virginitas coronam non gerunt vi ſuperata t. p. 1589 n. 40 p. 1597.

Virginitatis deſtitutio n. 89 p. 1006.

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Virgula Mercurialis publica tempore n. 24 p. 1375.

*Virtus.*

Virtuti honorem non adverſatur n. 6. p. 406.

*Vis.*

Vis eſt vel Compulſiva, ablativa, expulſiva, vel turbativa n. 1 p. 1601.

Vis, ut privatum, vel ut publicum delictum conſideratur t. p. 1600.

Tit. Ne quis eum, qui in jus vocatur, vi eximat t. p. 111

An quis per ſe, an per alium vim ſaciat, paria ſunt n. 6 p. 111 in [*]

Familiae judicio debitorum tenentur, creditori tenentur ad totum debitum; tamen vero tenentur tenetur L. ſiue Muſſinis ibid. p. 111 in [*]

Vis eſt imperata major, qui repelli non poteſt n. 7 p. 210.

Quae vi metuque compulſus aliquid geſſit, reſtituuntur t. p. 209.

Vis inficta n. 9 p. 211.

Vis compulſiva levius delictum exiſtimatur, quam ablativa n. 1 p. 1598.

Violentum à mera geſtum differt n. 1 p. 212.

Vi

Quæ ſint remedia contra vim expulſivam, turbativam? n. 2 p. 210.
Vis fiducia officii facta, major eſt n. 36 p. 215.
*Tit.* Ne vis fiat ei, qui in poſſeſſionem miſſus eſt t. p. 1393.
*Tit.* De vi, & vi armata t. p. 1398.
Vi dejectus, perinde habetur, ac ſi poſſideat n. 7 p. 1402.
*Tit.* Quod vi, aut clam t. p. 1410. Eſt interdictum retinendæ poſſeſſionis t. p. 1411.
Quæ vi, vel clam extructa ſunt, tali modo deſtrui poſſunt n. 8 p. 1411.
Opus, quod vi aut clam factum, alter propria autoritate deſtruere poteſt n. 11 p. 1285.
*Tit.* Vi bonorum raptorum, & de turba t. p. 1531.
Vi ſtuprata, maſcula, aut pœna notatur nulla t. p. 1589.
*Tit.* Ad Leg. Jul. de vi publica t. p. 1600
*Tit.* Ad Leg. Jul. de vi privata t. p. 1602.

*Viſio.*

Viſio, an fiat per radiorum emiſſionem, aut ſpecierum receptionem? n. 17. p. 351.

*Viſitor.*

Viſitor n. 2. 5. p. 409.

*Vita.*

Vita per motum & palpitationem cordis indicatur n. 26 p. 52.
-- ubi commodè præſumi nequit, ibi ab afferente probanda n. 29. p. 53. in [*]
Vitæ anteactæ honeſtas, quandoque ſiniſtram diluit ſuſpicionem n. 10 p. 57. n. 15 p. 1629
Vita hominis longævi ſunt 100 anni n. 47 p. 303.

*Vitalitium.*

Vitalitius Contractus frequentatur in Italia & ob incertum mortalitatis eventum ſuſtinetur n. 25 p. 776
Poteſt etiam per læſionem enormiſſimam vitiari ibid.

*Vites.*

Vites cædens, ut latro punitur num. 11 p. 1531.

*Vitium.*

Rem vitioſam ſciens vendens, tenetur ad omne intereſſe n. 31 p. 912.

Vi

Quod ab initio vitioſum, ex poſt facto non convaleſcit n. 10. p. 1022.
Res vitioſæ ut furtivæ non poſſunt uſucapi, niſi vitium fuerit purgatum t. p. 1335 n. 64 p. 1343
Vitium eſt perpetuum corporis impedimentum n. 14 p. 911.
In equo aut animali vendito animi vitia, attenduntur num. 15. 17. pag. 911.
Ob vitium manifeſtum venditor non tenetur n. 32 p. 807 t. p. 909.

*Vitricus.*

Veriſimile eſt, vitricum affectione ſancta moveri ad privignum n. 11 p. 62
Vitrici perſona in jure eſt odioſa num. 52 pag. 1133.
Si paterno affectu aluit privignos, alimenta non repetit n. 5 p. 198
Vitricus poteſt eſſe tutor t. p. 1043

*Vitulus.*

Vitulus ſeparatus à vacca vendatur, etiamſi adhuc lactetur n. 51 p. 809.

*Vivarium* vid. *Stagnum.*

Piſces vivario eximens, ordinaria furti pœna tenetur n. 13 p. 1314

*Vivere.*

Viventis nulla eſt hereditas n. 86. p. 151. n. 16 p. 1155 n. 8 p. 1395.

*Unio Prolium.*

Unio prolium, quid? t. p. 61
Rara eſt n. 23 p. 64.
Jure Romano ignorata n. 24 p. 64
Moribus introducta ibid.
Contra jus civile ibid. in [*]
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Fit ſecundum ſtatuta cujuſque loci ibid. in [*]
Conſtitutio Moguntina n. 25 p. 65
Tribuit poteſtatem patriæ poteſtati analogam n. 24 p. 65
Non inducit fraternitatem inter liberos pacificatos n. 25 p. 65 & in [*] ibid.
Effectus unionis ultra pactum non extendendus ibid.
Afficit bona jam quæſita ibid. n. 25
Non irritatur per reſtitutionem in integrum ibid.

Vo Un

Pactum unionis ſtrictè interpretandum, hinc quæ ſpecialiter in id non ſunt deducta hoc non perveniunt ibid. in [*]
Non ſubſiſtit, niſi conſentiant omnes, qui jus ſuccedendi habent num. 29 p. 106. in [*]

*Unitas.*

Unitas perſonarum fingitur inter filium & patrem n. 33 p. 1295
Unitas perſonarum ceſſat poſt emancipationem n. 57 p. 1104.
Unitas perſonæ fictæ inter patrem & filium durat quamdiu patria poteſtas durat t. p. 55 n. 24. p. 59. n. 66. p. 148. n. 38. p. 1296.
Aditio hereditatis inducit unitatem perſonæ inter patrem & filium t. p. 1155. n. 42 p. 1158

*Univerſitas, vid. Civitas.*

*Tit.* Quod cujuſque univerſitatis nomine &c t. p. 198.
Univerſitatis cauſa non pertinet ad ſingulos n. 35 p. 188
Univerſitas & homines de univerſitate ſibi invicem opponuntur n. 1 p. 194
Univerſitates ſunt perſonæ Myſticæ t. p. 193.
Univerſitas rerum, vel perſonarum n. 1 p. 194.
Univerſitas Cæſarum n. 63 p. 93
In cauſis univerſitatis non ſufficit duos vel tres jurare, ſed ſinguli jurare tenentur n. 1 p. 194
Membra univerſitatis quatenus in cauſa univerſitatis teſtari poſſint t. p. 962
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*Vocatio.*

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Voigt.

Reichs-Voigt t. p. 78
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*Voluntas.*

Voluntas ultima, vid. *Teſtamentum.*
Voluntas, vel Philoſophicè, vel tacitè, vel juridicè ſumitur n. 13 p. 7




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In rebus in differentibus, ſtat pro ratione voluntas n. 8 p. 28
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Votum patris, filiis prodeſſe poteſt t. p. 192.
-- filii, patri prodeſſe poteſt ibid.
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Quid de voto proprio? n. 7 p. 197.
Non obligat in alterius præjudicium n. 72 p. 1005.
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Uſburgeri n. 13 p. 1688.

Uſucapio & Uſurpatio.

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Uſurpatio eſt exceptæ & nondum perfectæ uſucapionis interruptio t. p. 1336.
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Res vitioſæ uſucapi non poſſunt n. 13. p. 315

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Nec uſucapi poſſunt res ſpecialiter exceptæ t. p. 1335
Res aliena b. f. intra 30 annos uſucapi poteſt n. 29 p. 1339.
Uſucapiendi facultas, ſola traditione non transfertur n. 128 p. 713.
Quæ poſſunt alienari, etiam poſſunt uſucapi n. 18 p. 1338
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Uſura.

Uſuraria pravitas ut probetur producenda documenta: Oder die Zinß-Verſchreibung n. 67 p. 133.
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Uſuræ quando ad tertii manus pervenerunt, omnino novæ ſors ſiunt *n.* 127 *p.* 761 *t. p.* 925 *n.* 57. 58. *p.* 933.
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*Uſuarius, Uſus.*

Jus utendi ex contractu quæſitum ad heredes tranſit *n.* 21 *p.* 542.
Uſus præcisè ad perſonam uſuarii adſtrictus eſt, hinc nec ipſe uſus, nec actio pro uſu cedi poteſt *n.* 55 *p.* 752. *n.* 35. *p.* 837
Uſus ſervum committit depoſitarius *t. p.* 649. *n.* 3 *p.* 653.
Uſus debitus locatur, & poſteriori traditur, eidem invito non eſt reſtituendus *t. p.* 819.
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Qui gregis uſum habet, illo ad ſtercorandum agrum, lacte verò modico ſaltem utitur *n.* 3 *p.* 337.
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Cum familia licet ſe uſus, aut proprietario ex fructibus nihil ſuperſit *t. p.* 337.
Quod uſum excedit, proprietario aliquando debetur *t. p.* 337.
Uſus ſimplex, ut uſusfructus *t. p.* 337.
Agrum colere non tenetur *num.* 10. *p.* 338.
Si fructus ſuperſint, ex iis tributa ſolvit *n.* 12 *p.* 338.
Non poteſt fructus vendere, benè tamen hoſpitem recipere *n.* 4 *ibid.*
Si pars aliqua vacua ſit ab uſu, illa proprietarius uti nequit *t. p.* 337. *n.* 5. *ibid.*
Eſt perſonaliſſimus *n.* 17 *p.* 338.
Jus utendi alius cedi nequit *t. p.* 337. *n.* 5 *ibid.*
Uſuarius cavet, ſe non ſecum uſumque ſervaturum *t. p.* 337.

*Uſusfructus.*

Tit. De uſufructu, & quemadmodum quis utatur *t. p.* 324.

Uſ

*Tit.* De uſufructu accreſcendo *t. p.* 330.

Uſusfructus diviſio *t. p.* 325.

Conſtituitur vel à lege, vel ab homine *t. p.* 325.

Uſus in judiciis diviſoriis *n.* 19 *p.* 328 acquiritur præſcriptione & uſucapione *n.* 20 *p.* 328 non verò à *n.* ſ poſſeſſore longiſſimi temporis præſcriptione *t. p.* 321 325. *n.* 24 *p.* 328 cum perſona interit *n.* 44 *p.* 70. *n.* 17 *p.* 114.

Uſusfructus cauſalis, ſive è re propria, non eſt propriè uſusfructus, ſed effectus dominii *n.* 9. 10 *p.* 327 in [*]

Uſusfructus non poteſt ab eo, qui utile ſaltem dominium habet conſtitui *t. p.* 325 *n.* 27 *p.* 328.

Verus uſusfructus eſt in rebus uſum ſine abuſu præſtantibus *n.* 33 *p.* 328.

Uſusfructus conſtitui poteſt in omnibus rebus, quæ ſunt in commercio, & uſum quemcunque præſtare poſſunt *t. p.* 325.

In corporalibus & incorporalibus *t. p.* 325 *n.* 35 *p.* 329.

Durante uſufructu proprietarius nihil deteriorare poteſt, ſed impedimenta tollere debet *t. p.* 326.

Uſusfructus ab utili dominio differt *n.* 12 *p.* 327.

Non transmittitur ad heredes *t. pag.* 331.

Si verò heredibus fuerit conſtitutus, primis defertur *t. p.* 331. ad heredes non tranſit jure hereditario, ſed ex proviſione teſtatoris *n.* 3 *p.* 332.

Si fuerit relictus uſusfructus filio familias vel ſervo, tunc ille remanet apud patrem vel dominum defuncto filio vel ſervo *n.* 6 *p.* 332.

Uſusfructus civitati relictus 100 annis expirat *n.* 28 *p.* 328 *n.* 7 *p.* 1788 vel diſſoluta civitate *t. p.* 331.

-- Non poteſt alienari, cohæret enim perſonæ *t. p.* 329. 332. *n.* 17 *p.* 333.

Uſusfructus Iudicialis conſiſtit in jure percipiendi mulctas, aut ſportulas judiciales *n.* 36 *p.* 329.

Uſusfructus pluribus conjunctim legatus, ſi alter deficiat, accreſcit alteri *t. p.* 330.

Uſ

Uſusfructus conjunctim legatus, ſive verbis tantum, ſive re tantum, ſive re & verbis ſimul *t. p.* 330

Quocunque modo conjuncti fuerint uſufructuarii jus accreſcendi locum habet *n.* 2 *p.* 330. in [*]

Uſusfructus etiam poſt conteſtam realem accreſcit *t. p.* 330.

In hoc differt uſusfructus ab alio legato *n.* 3. *p.* 330.

Ad alimenta relictus uſusfructus, non accreſcit *n.* 4 *p.* 331.

-- Etiam ei accreſcit, qui ſuam portionem amiſit, *t. p.* 330. *n.* 3 *ibid.*

-- magis accreſcit perſonæ, quam rei *n.* 5 *p.* 331.

-- cui accreſcit, ille etiam onera deficientis agnoſcere tenetur *num.* 6 *pag.* 331.

-- Non accreſcit plane non conſtituto *t. p.* 330.

In quaſi uſufructu cautio non requiritur pro forma *t. p.* 334.

In quaſi uſufructu per traditionem dominium rerum transfertur *t. p.* 334.

Quaſi uſusfructus finitur morte, maxima & media capitis deminutione *t. p.* 334.

Finito quaſi uſufructu repetitur res in genere, vel æſtimatio *t. p.* 334.

Quis ſit effectus quæſtionis, utrum res ad verum, vel quaſi uſumfructum pertineat? *n.* 5 *p.* 335.

Uſusfructus filio legatus ad patrem pervenit, nec filio mortuo exſpirat *n.* 5. *p.* 606.

Uſusfructus cui competit, eidem & adminiſtratio incumbit *n.* 58 *p.* 607.

Uſusfructus, quo ad dies vitæ ipſius uſufructuarii cedi poteſt *n.* 55 *p.* 752. *n.* 59. *p.* 753.

Uſusfructus ad dies uſufructuarii locari poteſt *n.* 30 *p.* 817.

In actibus inter vivos, ut emtione, donatione, jus accreſcendi non obtinet *n.* 1 *p.* 330.

Dies uſusfructus purè legati cedit ab adita hereditate, non à tempore mortis *t. p.* 331. *n.* 1 *ibid.*

Uſ

In diem vel ſub conditione relictus, ſi ante ejus exiſtentiam agat, non malè, ſed inutiliter agit *t. p.* 331.

Aliud in contractibus, ubi etiam dies deficere nequit *n.* 2 *p.* 331.

*Tit.* Quando dies uſusfructus legati cedat *t.* 3 *p.* 331.

*Tit.* Quibus modis uſusfructus & uſus amittitur *t. p.* 331.

*Tit.* De uſufructu earum rerum, quæ uſu conſumuntur *t. p.* 334.

Inter uſumfructum à lege, vel ab homine conſtitutum, hoc intereſt, quod in hoc, ab homine ſcilicet conſtituto, uſufructuarius cavere tenetur *n.* 19 *p.* 328. in [*]

*Tit.* Si uſusfructus petatur, vel ad alium pertinere negetur *t. p.* 336.

Finitur uſusfructus morte uſufructuarii *t. p.* 331.

Finitur uſusfructus tanto tempore, quo dominium amittitur *n.* 9. 10. *pag.* 332. 333.

Proprietarii morte uſusfructus non finitur *t. p.* 332. *n.* 55 *p.* 606.

Uſufructuario non debetur caro & corium animalis demortui *num.* 11. *pag.* 333.

Uſufructuarius tenetur ad expenſas modicas *n.* 194 *p.* 850.

Uſufructuarius non tenetur ad reddendas rationes *n.* 9 *p.* 1093

Finito uſufructu, res cum fructibus nondum perceptis proprietario reſtituenda *t. p.* 332.

Uſufructu finito, penſiones & uſuræ pro rata anni dividuntur, & debentur uſufructuario, quando dies ceſſionis venit *n.* 19 *p.* 334

Quaſi uſusfructus conſtituitur à Lege, non judice *t. p.* 334 *n.* 2. 5. *p.* 334. 35. in [*]

*Uſufructuarius.*

*Tit.* Uſufructuarius quemadmodum caveat *t. p.* 338

Uſufructuarius rationes non reddit *n.* 65. *p.* 698.

Uſufructuarius jure civiliter, non vero naturaliter poſſidet *t. p.* 325.

Facultas percipiendi fructus, perſonæ uſufructuarii cohæret *n.* 46 *p.* 329

Uſ

Uſufructuarius à ſatisdatione, de judicio ſiſti, liber non eſt *r. p.* 112. *n.* 12 *p.* 114 in [*] 17. 18. ubi ratio, cur Carpzovius in uſufructuario Saxonico diverſum ſtatuat *p.* 114

In rebus quæ uſu conſumuntur, eſt quaſi uſufructus *r. p.* 334 *n.* 4 *p.* 335

Uſufructuarius, cuſtodiæ cauſa poteſt caſam in area ædificare *r. p.* 326

Si quid ædificet, expenſas non recuperat *n.* 38 *p.* 329.

Re & acceſſione ejus plenè utitur, etiam ad voluptatem *r. p.* 326

Nec ob quamlibet deteriorationem jure ſuo cadit *n.* 23. 24 *p.* 341

Fructus percipiendo ſuos facit *r. p.* 326. & hac ratione melioris conditionis eſt, quam b. f. poſſeſſor *n.* 41 *p.* 329

Eſt fructuum dominus, & ſic illis abuti poteſt *n.* 40 *p.* 329

Laudemia percipit *n.* 43 *p.* 329.

Uſufructuarius poteſt venari, & jus venandi alteri concedere *r. p.* 326

Itemque fructus oppignorare *num.* 45. *p.* 329

Uſufructuarius, neque ipſum uſumfructum in alium transferre, nec rem alienare poteſt *r. p.* 326

Quibus actionibus utatur uſufructuarius? *r. p.* 326.

Quibus, quaſi uſufructuarius? *r. pag.* 334.

Uſufructuarii etiam ſibi invicem cavent *r. p.* 339.

Uſufructuarius cavere debet *r. p.* 326 *n.* 19 *p.* 328 in [*]

Sed non eſt ſubſtantiale *r. p.* 328.

Hæc cautio tendit ad ſecuritatem *n.* 8 *p.* 340.

Hæc cautio remitti poteſt *r. p.* 339

Teſtatoris tamen remiſſio, habetur pro non adjecta *r. p.* 339. *num.* 27. 28. *p.* 341.

Eſt neceſſaria, quando exigitur *num.* 1 *p.* 340.

Uſufructuarius fructus ante cautionem ſuos facit *n.* 1 *p.* 340

Tenetur rem modicis ſumptibus reficere *r. p.* 326.

Inſigniores verò à proprietario repetit *n.* 18 *p.* 333

Uſ Vu

Gregem ex fœtu ſupplere, itemque arbores ſubſtituere *r. p.* 326.

Tributa de ſuo ſolvere, niſi fructuum quantitatem exſuperent *ibid.*

Hic fidejuſſoria cautio locum habet *r. p.* 339.

Admittitur etiam juratoria *ibid.*

Non tenetur ad alienum proprietati ſolvere *r. p.* 326

Inventarium conficit *n.* 25 *p.* 341

Poteſt proprietarium arcere, ne perceptionem fructuum impediat *num.* 47 *p.* 329.

Finito uſufructu, quos fructus percipiat? *n.* 19. 20 *p.* 334.

*Vulneratus, Vulneratio.*

Vulneratus cruciùs agit, actionem injuriarum, quam ex L. Aquilia inſtituendo *n.* 8 *p.* 175 *n.* 2 *p.* 368.

-- Non ſemper verò actio injuriarum, locum habet, ubi ex L. Aquilia agi poteſt *n.* 47 *p.* 372 in [*]

Damna & expenſas in curationem factas vulneratus recipit, niſi provocatus, leges juſtæ defenſionis exceſſerit *n.* 5 *p.* 369 *n.* 41 *p.* 371 *n.* 47 *p.* 372.

Cui manus amputata qualiter agat? *n.* 28 p. 370.

Quid vulnerato jure Saxonico tribuatur *n.* 36 p. 371.

Si ex vulnere mors per accidens ſequatur? *n.* 3 p. 1606.

Vulnera non dantur ad menſuram *n.* 2. *p.* 1606.

Vulneris inſpectio neceſſaria *n.* 6. p. 1606.

Qui aliquem ictu vulneravit, non punitur pœna homicidii ordinaria, ſi vulneratus reconvaleſcat *n.* 10 p. 1509.

Vulneratio ferè non tribuit jus vulneranti *n.* 12 p. 1313.

*Uxor.*

Uxor ob fundum dotalem conſtante matrimonio non ſatisdat *r.* p. 112.

— Fundi dotalis habet naturale dominium *n.* 16 p. 114. quod ſtante matrimonio quieſcere dicitur *n.* 6 *p.* 308.

Uxor in recipienda dote non creditrix, ſed domina eſt *n.* 18 *p.* 585.

Uxor in Saxonia fundum dotalem, etſi

Ux

maritus conſentiat, abſque curatoris conſenſu alienare nequit *n.* 9, p. 1021 *n.* 12 p. 1022.

Uxor maritum etiam relegatum ſequitur *r.* p. 989 Non verò vagabundum *ibid.*

-- Sequitur forum mariti, poſt ejus mortem *r. p.* 256.

Uxor nomen, dignitatem & forum mariti ſequitur *r.* p. 959.

Dotem repetens, jure Marchico omnibus creditoribus etiam expreſſis hypothecariis præfertur *n.* 113 *p.* 274. *n.* 31. *p.* 627.

Uxor pro dote repetenda, habet tacitam hypothecam in omnibus bonis mariti *r.* p. 890 *r. p.* 1365

Uxor vindicat res ob nuptias doſatas *n.* 3 p. 308.

Non verò rem dotalem *n.* 14 p. 309.

Uxor res in dotem datas à quocunque poſſeſſore vindicare poteſt, niſi communio bonorum ibi fuerit recepta *n.* 21 p. 627.

Uxor minorem dotem conſtituens, & per hoc læſa, poteſt reſtitui in integrum *n.* 31 p. 1014.

Uxor habet actionem ex L. Aquilia contra maritum, ſi in caſtigatione modum exceſſit *r.* p. 367.

Uxor marito cum liberis ſuccedens, bona ſua illata conferre tenetur *n.* 20 p. 1242.

Uxor mortua, non eſt amplius uxor, ſed fuit *n.* 50 p. 417.

Uxor tenetur maritum ſepelire, non vero ex propriis *n.* 49 *p.* 417

Uxor maritum accuſare nequit *n.* 21 p. 1594.

Uxor in concurſu creditorum, etiamſi mariti confeſſionem de illata dote habeat, tamen plerumque in ſupplementum jurare debet *n.* 86 p. 433.

Uxor pro marito non intercedit *n.* 13. p. 626.

Uxores non videntur tantopere pecunia indigere *n.* 16 p. 626.

Uxores non facile audent marito contradicere *ibid.*

Uxores validè contrahunt, ſola fidejuſſio autem reprobata eſt *n.* 17 p. 626.

Uxor prioritate renuntians, tacitè ſibi reſervaſſe intelligitur hanc conditionem: modò bona ſufficiant *n.* 31 p. 627 alias fieret indotata *n.* 54 p. 1017.



Hæc

Ux

hac renunciatio tamen præjudicare poteſt heredibus, *ibid.*

Uxor, quo ſenſu omnis fortunæ ſocia dicatur? n. 19 p. 680.

Uxor dicitur quaſi unxor n. 31 p. 997.

Uxor, ut conſequatur hypothecam tacitam in bonis mariti requiritur dotis illatio n. 4 p. 884.

Uxor putativa habet jura legitimæ uxoris n. 22 p. 893 n. 31 p. 1371.

Uxoris hypotheca non impedit marito alienationem rerum ſuarum n. 24 p. 890

Uxor ſi lubens teſtetur, ſive teſtimonium dicat contra maritum, ſine dubio inimica marito eſt n. 18 p. 968.

Uxor cum marito una caro *ibid.*

Uxor in cauſa criminali non facile cogenda ad teſtimonium contra maritum n. n. 49 p. 968.

Uxor marito ſubjectionem, obſequium & reverentiam, operas, & auxilium debet 4 p. 189.

Ux

Maritum relegatum ſequitur 6. p. 1008.

Uxorum eſt nubere, non ducere n. 31 p. 997

Uxor ad operas vulgares non obligatur n. 8 p. 1005.

Uxoris privilegia ratione dotis, ratione parapheenalium & receptitiorum n. 10. p. 1010.

Uxor nominem facit majorennem n. 23. p. 1089.

Vir. Unde Vir & uxor p. 1257.

Ux. W.

Wechſelhandlung n. 19 p. 580

Wenceslaus Imperator carnificem compatrem habuit n. 51 p. 179

Wenden n. 13 p. 47.

Werigeldum pro maſculo 20 thaler. pro fœmina 10 thaleri n. 2. p. 368. Romæ in annuali præſtatur, & arbitrio judicis determinatur n. 45 p. 372

Wetterbücher n. 11 p. 349.

Wildfangii, ſpecies hominum propriorum in Palatinatu n. 13 p. 47.

Z.

Ex quibus hominibus fiant? num. 3 p. 403.

Wisbenſe jus n. 1 p. 572

Wiſmarienſe Tribunal n. 32 p. 1660

Wünſchel-Ruhte vid. *virgula Mercurialis.*

Xenia.

Xenia ſunt eſculenta & poculenta, quæ paucis diebus poſſunt abſumi n. pag. 1013.

Zaun-gericht n. 82 p. 96.

Zeitfälle als Mord/ Brand/ Nath n. 70 p. 94.

Zenonianum juramentum vid. *juramentum in litem.*

Ziegeuner in Germaniam venire prohibentur n. 16 p. 49.

Zollbereiter conſtituuntur ad indagandos illos, qui in fraudem vectigalis ſuſceſſoris viâ utuntur n. 22 p. 1289 n. 27 p. 1290.

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